

**THIS IS COPY.**

**Vol. IV**  
**TRANSCRIPT OF RECORD**

---

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1937**

---

**No. 144**

**D. B. HEINER, INDIVIDUALLY AND AS FORMER COL-  
LECTOR OF INTERNAL REVENUE FOR THE TWENTY-  
THIRD DISTRICT OF PENNSYLVANIA, PETITIONER**

**vs.**

**PAUL MELLON, DAVID K. E. BRUCE, AND DONALD D.  
SHEPARD, EXECUTORS OF THE ESTATE OF A. W.  
MELLON, DECEASED**

---

**No. 145**

**D. B. HEINER, INDIVIDUALLY AND AS FORMER COL-  
LECTOR OF INTERNAL REVENUE FOR THE TWENTY-  
THIRD DISTRICT OF PENNSYLVANIA, PETITIONER**

**vs.**

**JENNIE KING MELLON, RICHARD KING MELLON, SARAH  
MELLON SCAIFE, ET AL., ETC.**

---

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JUNE 15, 1937**  
**CERTIORARI GRANTED OCTOBER 11, 1937**

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*Bill of Exceptions—Defendant's Offers.*

---

*Mr. Booth:*

In other words, this is an attempt by the then Collector to say that the Commissioner was wrong in computing the 1925 income, in computing the tax on it, before the Commissioner has taken any action and while his final determination still stands as admitted on the pleadings and in this record.

*The Court:*

We will overrule the objection for the present, and later rule upon it when we consider it.

That the purport and substance of said exhibit so offered and admitted in evidence, is contained in the parts thereof which are in words and figures as follows:



**Defendant's Exhibit "HH".**  
(Pages 514 a-514 e.)

2-93

3252



# TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

OFFICE OF  
INTERNAL REVENUE AGENT IN CHARGE  
Pittsburgh.....DIVISION

September 8th, 1925.

In Re-- Andrew W. Mellon,  
513 Smithfield St.,  
Pittsburgh, Pa.

Examining Officer	Exam. Commenced	Exam. Completed	Time
C.B. Eastwood	August 31, 1925	Sept. 8, 1925	6 days

ALL COMPUTATIONS AND CALCULATIONS  
VERIFIED BY COMPTOMETER  
BY THE OFFICE OF REVENUE

Internal Revenue Agent in Charge,  
Pittsburgh, Pa.

An examination of the books and records of the above named taxpayer for the year 1921 discloses the following in regard to his income tax liability:

## SUMMARY

1921

Exemption Status:-- Head of family- ( not needed ).

Business:-- Secretary of the Treasury U.S.A. and Finance.

Authority for Examination:-- In conjunction with examination of the trusteeship of J.R. A.W. and M.S. Mellon.

Basis for Comparison: Retained copy of the original return.

The findings of this report are in accordance with Mr. H.M. Johnson, representing the taxpayer's position in the decision.

g.b.



OFFICE OF  
INTERNAL REVENUE AGENT IN CHARGE  
Pittsburgh.....DIVISION

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

20-93

RECEIVED  
SEP 12 1925

September 8th, 1925.

In Re-- Andrew W. Mellon,  
513 Smithfield St.,  
Pittsburgh, Pa.

Examining Officer	Exam. Commenced	Exam. Completed	Time
O. B. Johnson	August 31, 1925	Sept. 8, 1925	6 days

ALL COMPUTATIONS AND CALCULATIONS  
VERIFIED BY COMPTROLLER  
BY THE OFFICE OF REVENUE

Internal Revenue Agent in Charge,

Pittsburgh, Pa.

PROTECTED

An examination of the books and records of the above named taxpayer for the year 1921 disclose the following in regard to his income tax liability:

SUMMARY

1921

Married Status-- Head of family. (Not married).

Business-- Secretary of the Treasury, 1921, and Treasurer

Authority for Examination-- In the exercise of the authority of the Treasury of the U. S. and I. R. Act.

Books for Comparison Retained copy of books and records

The findings of this examination are as follows: That Mr. E. E. Johnson, representing the Internal Revenue Service,

103



--2--

8-94

A.W.Mellon.

The Schedule 2 to 3E inc., represent income from joint holdings of Messrs. A.W. and R.B.Mellon and is distributed in accordance to the ownership of the assets.

Reports have been filed on Partnerships, etc.

Respectfully submitted,

Clarence B. Eastwood,  
Revenue Agent.

92

INDIVIDUAL

-1--

22 95

Name A. W. Mellon

Schedule No. 1  
 Years 1921-1929-1930-1931  
 BLOCK ADJUSTMENTS

	Revol	Assets	Reserves	Collective	Wife's Income
1 Salaries	11788.29			11788.89	✓
2 Interest	611232.60			611232.60	✓
3 Partnerships etc.	(23315.31)	30325.24		(3032.03)	
4 Rental	(307880.95)		19999.93	(327880.95)	✓
5					
6					
7 Sales	(73454.71)	514782.50		133307.78	✓ 136,769.01
8 Dividends	2803783.54			2803783.54	✓
9					
10 Misc. Income	9800.30		10731.00	(9800.70)	✓
11	2028003.75	234835.74	20730.93	5381230.00	
12 Interest paid	428019.95			428019.95	✓
13 Taxes	101055.77			101055.77	✓
14					
15 Contributions	292305.05	1015.00		291290.05	✓
16					
17 Expenses	77389.85	1040.00		78429.85	
18	898770.74	3155.00		894715.74	
19	2198333.01			2404543.85	2,402,404.16
Net income subject to ordinary taxes					
Add: Capital					
Net gain					
Total income					

Wife's net gain or loss .....  
 Husband's net income or loss .....



20-97

-3-

A.W.Mellon.

Schedule 1-A Contd.

Line 3 Reported loss 23,315.31 Corrected as follows:

<u>Amended</u>	<u>Original</u>
(10,087.58)	(10,087.58)
(32,503.93)	(32,507.37)
30,439.45	19,439.45
<u>(3,051.06)</u>	<u>(23,155.51)</u>

West Overton Distilling  
O. Overholt and Co.  
J.R., A.W., and R.B. Mellon *overpaid*

See reports on the three organizations for details.  
The taxpayer included the 19,989.93 difference from J. R.  
A.W. and R.B. Mellon in Line 4 and this change is but a transfer  
from Line 4 to Line 3.

Schedule 1-B

Original Amended

Line 4. Reported loss of 307,980.93 corrected loss.

Rentals:

Joint Acct. Sch. 2.  
W.L.Mellon & 2.  
J.R., R.B. and A.W.Mellon  
Other Properties

36,786.30	36,786.30
102.37	102.37
19,989.93	-0-
67,859.37	67,859.37
<u>124,128.95</u>	<u>104,128.44</u>

Total Rentals.

Contd.

8-116

01/10/10

132, 133, 134

135, 136, 137

138, 139, 140

1, 100, 100

10 of 1000

023

*Bill of Exceptions—Defendant's Offers.*

---

The omitted portions of said Defendant's Exhibit "HH", together with the part set forth above, are also incorporated by reference and made part hereof, the original said exhibit in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibit be sent up in its original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

---

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "II", being a certified photostatic copy of revenue agent's report dated March 3, 1926, covering the years 1922 and 1923 of the income of the plaintiffs in these two actions.

*Mr. Booth:*

Same objection.

*The Court:*

Objection overruled for the present, and exception noted.

That the purport and substance of said exhibit so offered and admitted in evidence, is contained in the parts thereof which are in words and figures as follows:

**Defendant's Exhibit "II".**

(Pages. 516 a-516 m.)

**BLANK**

**PAGE**





RECEIVED  
JAN 18 1961

OFFICE OF  
INTERNAL REVENUE AGENT IN CHARGE  
PITTSBURGH DIVISION

IN RE:           **ANDREW W. MELLON,** BY THE OFFICE OF REVENUE AGENT IN CHARGE  
Woodland Road.  
**ALL COMPUTATIONS AND CALCULATIONS**  
**VERIFIED AS CORRECT.**

Pittsburgh, Pa.,  
March 3, 1926.

Examination Completed March 3, 1946 20 days

**Examination Commenced**  
**January 11, 1923**

1. **Resolving Internal Revenue Agent,**  
 2. **Philadelphia, Pa.**

An examination of the books and records of the above-named individual for the years 1923 and 1924, disclosed the following in connection with his income tax liability:

## SUMMARY

<u>Page</u>	<u>Additional Tax</u>	<u>Page No.</u>	<u>Overassessment</u>	<u>Coll. Mst.</u>
1002		1040	\$913.39	23rd Pa.
1003	None	1040	Pay	"
	<u>\$1,524.14</u>		<u>\$913.39</u>	
	<b>Totals</b>			
			<u>Overassessment</u> \$13.39	
			<u>Coll. Tax and</u> \$50.75	

Marital Status - Head of a family; one dependent under sixteen years of age.

Business - Secretary of the Treasury of the United States.

Authority for Examination - Original returns for the years 1948 and 1949.

and 1953, and the Index for American - Medical returns for years 1950

Attention is directed to the fact that the  
I have in store on the subject of the  
discovery is due to the fact that the  
only really real movement  
return, to that which has been  
current now - this has been in  
out the last year and will be

2-11

In re: ANDREW W. MELLON

-3-

his books, and in doing so, he is reporting according to the law and regulations.

Income is derived from Salary - Interest on Bonds, Notes and Mortgages, Income from Fiduciary and Partnerships, Profits from Sales, Income from Rental Properties and Dividends on Stock.

The changes affecting the net income for the year 1922 are as follows: Decrease in Tax-Free Bond Interest, Increased Income from A. Overholt & Co. (Partnership) and Increases in Taxes Paid.

Changes for the year 1923 are as follows: Increase in Tax-Free Bond Interest - Increase in Loss from A. Overholt & Co. (Partnership); Increase in Taxes Paid - Increased Income from Sale of Capital for Gain and an error in listing the amount of Income Tax Paid at source taken as a deduction against taxes, as well as a change in said amount as per this report. The changes in this report have been discussed with E. M. Johnson, acting for Andrew W. Mellon, who approves same, and has signed Form 874, which is hereto attached.

(Signed) E. C. Shannon,  
Internal Revenue Agent.

Enclosures:

Original returns for the years 1922 and 1923; Forms 1099 and 1000, 702 and Form 874.

24

In ref. ARTHUR W. MELLON

-1-

9.12

SCHEDULE 1

Year 1922 ✓

Block Adjustments

	<u>Return</u>	<u>Additions</u>	<u>Reductions</u>	<u>Corrected</u>
Salary - U. S. Treasury Dept.	12,000.00			12,000.00 ✓
Income from Business, etc.	None			None
Interest on Bonds, 3% War-Free	116,464.22		19,733.33	96,730.89 ✓
Other Interest	510,793.81	19,733.33		530,527.14 ✓
Income from Partnerships, etc.				
Union Trust Co., Liquidating				
Agent - A. Overholt & Co.	16,648.11	2,935.07		19,483.18 ✓
West Overton Mattilting Co. Inc.	10,655.46			10,655.46 ✓
J. E. A. V. & E. B. Mellon, Tr.	20,438.70	19,999.92		40,438.62 ✓
Bonds & Royalties	265,524.52		19,999.92	285,524.44 ✓
Profit from Sales	12,338.60			12,338.60 ✓
Dividends	2,604,683.97			2,604,683.97 ✓
Summable Int. on Liberty Bonds.	1.46			1.46 ✓
Other Income				
Foreign Corporations	6,744.80			6,744.80 ✓
Bankry Refunds	3,133.33			3,133.33 ✓
Sale of Rights	44.10			44.10 ✓
<b>Total Income</b>	<b>3,006,341.92</b>			<b>3,006,376.99</b>
Losses by Fire, Storm, etc.	None			None
Interest Paid	363,705.39			363,705.39 ✓
Taxes Paid	101,043.02		6,551.18	106,514.20 ✓
Bad Debts	364,922.96			364,922.96 ✓
Contributions	116,440.18			116,440.18 ✓
Other Deductions				
Grace Contracting Co. 30,000.00				
Office Expense-Rents				
Salaries, etc.	86,521.71			116,521.77 ✓
<b>Total Deductions</b>	<b>1,062,653.34</b>			<b>1,068,204.52</b>
Net Income subject to Ord. Tax	1,939,688.58	42,668.32	45,384.43	1,937,072.47 ✓
Add: Cap. Net Gain	99,866.19			99,866.19 ✓
<b>Total Income</b>	<b>2,039,554.77</b>		2,616.11	<b>2,036,938.66</b>
Wife's Net Income or Loss	None			None



**IN RE: ANDREW W. MELLON**

## 3

In re: ANDREW W. MELLON

-3-

Schedule 1-4-cont.

Income from J. E. - A. W. & E. B. Mellon, Trustee - This item is increased \$19,999.92 to agree with the amount as reported on the fiduciary return, and the said amount is deducted from the amount as reported by the taxpayer as Cash Rental, under Schedule 1 - Item 5.

Schedule 1-5  
Year 1923, Form 1040

Item 5 - Rents & Royalties -

As shown in Schedule No. 1 - Item 5 - This item is increased \$19,999.92, the same being transferred to Schedule 1 - Item 4-C - J. E., A. W. & E. B. Mellon, Trustee, to agree with amount as reported in fiduciary return. See Schedule of Rental Property. Dates of depreciation as used in this Schedule of Rents are the same as used in previous reports and approved. The items of Other Expenses in Schedule consist of Interest - Taxes and Commissions. It will be noted in Schedule of Rents that items 1 to 45 inclusive are in connection with properties owned jointly by A. W. & E. B. Mellon.

Item 44 - Sundry - W. L. Mellon & E. B. Mellon are properties owned jointly by W. L. - A. W. & E. B. Mellon - 1/3 each.

Schedule 1-6

Item 6 - Profits from Sales - (\$12,328.60 Less)

Kind	Acquired	Cost	Sale Price	Profit or Loss
Liberty Bonds	1922	\$28,973.20	\$32,259.60	12.60
Crucible Steel Co. Stock	1930	75,126.00	59,610.00	12,516.00
Loss				12,328.60

Schedule 1-7

Item 7 - Dividends

Reported on return - \$2,804,683.97, corrected \$2804,283.97

See Schedule of Dividends

Schedule 1-8

Item 8 - Taxable Interest on Liberty Bonds

Reported on return \$1.46, corrected \$1.46.

Schedule 1-9

Item 9 - Other Income

Dividends - Foreign Corporations

Sundry Refunds

Sale of Rights

Totals

Return	Corrected
6,744.80	6,744.80
3,123.33	3,123.33
44.10	44.10
\$ 9,912.23	\$ 9,912.23

Item 11 - Losses by fire, theft, etc.  
Reported on return - \$100,000.00

Item 12 - Interest paid  
Reported on return \$100,000.00

Item 13 - Taxes paid  
Reported on return \$100,000.00  
State - \$100,000.00  
Federal - \$100,000.00

Item 14 - Bad debts \$100,000.00  
Reported on return \$100,000.00  
Grace Contracting  
F.T.F. Lovejoy Note-uncollectible  
Total

The Robert Grace Contracting Company of Pittsburgh, Pa. was incorporated October 15, 1929, under the laws of Pennsylvania. Capital stock of \$100,000.00, all issued for cash, and A. W. and E. B. Mellon jointly own 600 shares @ \$100.00 per share on \$60,000.00, and loaned said company the sum of \$1,211,500.00 as will be shown by balance sheet of said company. On October 15, 1932, the company was liquidated, selling all the assets to the Mellon-Grace Company of this city, for \$600,000.00 in cash - said cash being used to pay all preferred creditors, and the said amount was not sufficient to pay all the indebtedness as shown by balance sheet of said company as at December 31, 1932.

Summary of Losses  
Capital Stock - A. W. & E. B. Mellon (1/3 each) \$30,000.00  
A. W. Mellon \$20,000.00  
E. B. Mellon 30,000.00

Balance of Joint Loan Indebtedness \$723,936.96  
A. W. Mellon 364,497.98  
E. B. Mellon 364,497.98



In re: ANDREW V. MELLON

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Balance Sheet as at December 31, 1921  
Robert Grace Contracting Company  
Pittsburgh, Pa.

**ASSETS**

Cash	1,281.84
Accounts Receivable	76,586.22
H. Kleinhaus Company	4,650.62
Bills Receivable	341,157.37
H. Kleinhaus Company	130,000.00
Interest in Advance	12,842.26
Stock of Domestic Corps.	200,000.00
" " Sub Companies	5,000.00
H. Kleinhaus Company	95,000.00
Total Assets	<u>866,518.31</u>

**LIABILITIES**

Accounts Payable	22,081.01
Contr-Equip. & Supp. Co.	5,000.00
H. Kleinhaus Company	43.26
Bills Payable	1,311,900.00
Accrued Interest	613.34
Capital Stock	<u>100,000.00</u>
Surplus	<u>623,119.30</u>
Total Liabilities	<u>866,518.31</u>

Dr. J. ARTHUR V. MELLON

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20-18

SCHEDULE 2  
Part 1913 - Year 1940  
Statement of Tax

Total Net Income subject to ordinary taxes	\$1,937,073.47
Less Exemption	\$3,400.00
Dividends	2,806,323.97
Exempt Interest on L. B.	1.46
Income subject to Normal Tax	2,837,228.43
Part on	\$1,937,073.47
Tax on Corp. Net Gain	99,866.19 @ 12-1/2%
Total Tax	939,434.34
Less Tax withheld at source	12,453.27
Total Tax Assessable	926,981.07
Tax previously assessed	1,910,247.36
Overassessment	983,266.29

An exemption of \$3,500.00 was taken on the original return and it should have been \$3,400.00 as the net income exceeds \$5,000.00 (section 216).

This error does not affect the final results as there is no income subject to Normal Tax. Tax paid at source decreased \$384.03 due to change in tax-free bond interest as shown in Schedule 1-3.

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In re: Andrew W. Mellon

-21-

90-23

Schedule 7

Year 1923

Block Adjustments

	<u>Return</u>	<u>Additions</u>	<u>Reductions</u>	<u>Corrected</u>
Salary U. S. Treasury Dept.	12,500.00			12,500.00
Income from Business	None			None
Interest on Bonds - 2% Tax. - Free	94,066.10		19,880.00	74,186.10
Other Interest	718,719.75	19,880.00		738,599.75
Income from Partnerships, etc.				
Union Trust Co. liquidating	11,682.10		2,718.39	14,400.49
Agent A. Overholt & Co.	9,938.12			9,938.12
West Overton Distilling Co.	5,607.76	33,333.28		38,941.04
J. E. A. W. & R. B. Mellon, Trustees	441,644.60		33,333.28	474,977.88
Rents <i>land</i>	None			None
Profits from Sales	4,796,852.48			4,796,852.48
Dividends	None			None
Taxable Liberty Bond Interest	None			None
Other Income				
Foreign Stocks & Bonds	8,350.96			8,350.96
Underwriting Profit on Stock Ins.	1,740.41			1,740.41
Distribution Land Purchase Fund	5,434.41			5,434.41
Sundry Refunds	1,800.00			1,800.00
<b>Total Income</b>	<u>5,181,807.05</u>			<u>5,179,088.66</u>
Interest Paid	472,450.70			472,450.70
Taxes Paid (City, County State Luxury and Duty)	34,734.19		7,241.65	37,975.84
Losses by fire, storm, etc.	None			None
Bad Debts	1,857,367.09			1,857,367.09
J. M. Guffey Loans	1,855,566.67x			
John H. Galey "	<u>1,800.42</u>			
Contributions	377,403.18			377,403.18
Other Deductions				
Office Expense-Rentx & Salaries	64,511.42			64,511.42
Van Klack Lease	2,418.23			2,418.23
Miscellaneous	3,352.56			3,352.56
Premium on Bonds called	1,250.00			1,250.00
<b>Total Deductions</b>	<u>2,813,487.37</u>			<u>2,816,729.02</u>
Net Income subject to Ord.	2,368,319.68	53,213.28	59,173.32	2,362,359.64
Add: Capital Net Gain	<u>159,594.64</u>	<u>47,380.00</u>		<u>206,974.64</u>
	<u>2,527,914.32</u>	<u>41,419.96</u>		<u>2,569,334.28</u>
Wife's Net Income or Loss	None			None

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Schedule 7-1

Taxes 1923 - 1926 1929

Explanations of Items

Item 1 - Income from Salaries  
Salary reported \$12,500.00 - corrected \$12,500.00

Schedule 7-2

Item 2 - Income from Business  
Reported on return, None - Corrected, None.

Schedule 7-3

Item 3 - Interest on Tax-free Government Bonds  
Reported on return - \$14,066.10, corrected \$74,184.10  
The following items were included as tax-free bond interest and in accordance with available records, the said items are tax-free items:

Interboro Rapid Transit	\$19,200.00
Hill School	100.00
University Club	200.00
Country Club of Allegheny County	200.00
Difference	<u>\$19,500.00</u>

Item 3-a - Other Interest  
Reported on return \$718,719.78, corrected \$718,500.78  
This change is accounted for by the transfer of \$19,880.00 from tax-free bond interest schedule to schedule of other interest.

Schedule 7-4

Item 4 - Income from Partnerships and Fiduciaries  
Reported on return - A. Overholt & Co. \$11,023.13 Corrected \$14,440.00  
" " West Overton Dist. Co. 9,928.13 Corrected 9,928.13  
" " J. L. A. V. & L. B. Mellon (Trustees) 5,007.78 Corrected 5,007.78

Loss from A. Overholt & Co., is increased \$2,718.39 in accordance with Bureau Agent's report on said partnership under date of February 8, 1926.

Loss from West Overton Distilling Co., No change is made as per Bureau Agent's report under date of February 18, 1926.

Income from J. L. A. V. & L. B. Mellon - This item is increased \$31,536.24 to agree with the amount as shown on the Fiduciary return, and the said amount is deducted from the amount as reported by the taxpayer as cash rental under Schedule 7, Item 5 - Rents.

In re: **ANDREW W. MELLON**

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Schedule 7-6

Year 1923 - Form 1040

**Item 5 - Rents & Royalties**

Reported on return \$441,644.60, corrected \$474,977.83.

As shown on Schedule 7 - amount is transferred from Item 5 to Item 4-0 (J. E., A. V. & E. B. Mellon, Trustees), to agree with the distribution as shown on the fiduciary return and upon which a report has been made. See Schedule of Rents.

The rates of depreciation as used in this schedule of rents are the same as used in previous reports, and were approved. The items of other income in schedules consist of interest, taxes & commissions. It will be noted in Schedule of Rents that items 1 to 45, inclusive, are in connection with properties owned jointly by A. V. & E. B. Mellon.

Item 45 - Rents - E. B. Mellon & Co. properties owned jointly by E. B. A. V. & E. B. Mellon (1/3 each).

Schedule 7-6

**Item 6 - Profits from Sales**

Reported on return - None, Corrected - None.

Schedule 7-6

**Item 7 - Dividends**

Reported on return \$4,791,229.44 - corrected \$4,791,229.44  
See Schedule of Dividends

Schedule 7-6

**Item 8 - Rents & Royalties**

Reported on return - None, Corrected - None.



Schedule 7-12

Year 1923 - Form 1040

Item 12 - Taxes Paid

Reported on return \$24,734.19, Corrected \$27,975.84

The item of Taxes is made up as follows:

City, County and State \$17,150.98

Luxury Taxes as per list attached 17,820.94

Custom Duties 3,233.95

Total \$37,975.84

The difference (\$331.65) accounted for as follows:

\$3,233.95

7.70

\$3,241.65

These figures paid as per vouchers 276 and 288  
shown in listing original taxes

Schedule 7-13

Item 13 - Loans by Son, Son-in-Law, etc.

Reported on return, None, Corrected, None.

Schedule 7-14

Item 14 - 2nd Jobs

Reported on return \$1,857,367.09, Corrected \$1,857,367.09

J. H. Gaffey

John F. Gaffey

Grand

\$1,856,546.67

1,857.42

\$1,857,367.09

The Schedule of 2nd Jobs for full and complete explanation,  
as required by law, is attached and a part of this report.

Schedule 7-15

1927, 1928, 1929

The Schedule of Contributions.

Schedule 7-16

Reported on return \$41,811.43, Corrected

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

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\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43

\$41,811.43



In re: ANDREW V. MELLON

-25-

9.37

SCHEDULE B

Year 1923 - Form 1040

Computation of Tax

Total Net Income subject to ordinary taxes	2,362,359.64
Less - Exemption	
Dividends	2,400.00
Interest on U. S. Obligations	4,796,853.48
Income subject to Normal Tax	-0-
Surplus on \$2,362,359.64	
Tax on Capital Net Gain (\$206,974.64 @ 12-1/2%)	
Total Tax	1,172,911.53
Less Tax withheld at source	1,483.72
Less 20% reduction in taxes	294,503.91
Total tax assessable	295,986.63
Tax previously assessed	882,025.02
Additional Tax to be assessed	880,490.88
	<u>1,534.14</u>

Attention is called to the fact that on the original return under the head of Computation of Tax, an error of \$800.00 was made in the amount of income tax paid at source which was deducted from the total tax.

2% on \$94,066.10, the amount of tax-free bond interest, originally reported is \$1,881.32 instead of \$1,081.33. It will be noted that on the corrected report the tax-free bond interest is reduced to \$74,186.10 and the tax paid at source is \$1,483.72.

1172911.53  
1,972,697.87  
28,497.87

52.8

*Bill of Exceptions—Defendant's Offers.*

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The omitted portions of said Defendant's Exhibit "II", together with the part set forth above, are also incorporated by reference and made part hereof, the original said exhibit in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibit be sent up in its original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "JJ", for the same purpose, being a certified photostatic copy of the individual income tax return for 1922 filed by A. W. Mellon.

*Mr. Booth:*

Same objection.

*The Court:*

Objection overruled for the present, and exception noted.

*Mr. Booth:*

May it be understood, rather than cluttering up the record with my objections, that my objection runs to all of these exhibits for the same purpose?

*The Court:*

It may be so understood; and that the ruling will be in effect reserved, or the determination; and we will admit them for the present.

That the full purport and substance of said exhibit so offered and admitted in evidence is contained in the parts thereof which are in words and figures as follows:

**Defendant's Exhibit "JJ".**

(Pages 518 a-518 b.)



# INDIVIDUAL INCOME TAX RETURN

IF NET INCOMES OF MORE THAN \$5,000  
OF HUSBAND AND WIFE IF COMBINED NET INCOME EXCEEDS \$5,000  
For Calendar Year 1922

RECEIVED  
CLAIM NO. 1040  
DATE 3/14/24  
UNIT NO. 1040  
DATE 3/14/24

1922

File This Return Not Later Than 90th Day of the Third Month Following the Close of the Taxable Period  
(FOUR NAME AND ADDRESS PLACES ONLY)

A. W. Mellon

Woodland Road

Pittsburgh

Allegheny

Pennsylvania

OCCUPATION, PROFESSION, OR KIND OF BUSINESS

Secretary of the Treasury of the United States

1. Are you a citizen or resident of the United States? **Yes**
2. If you filed a return for 1921, to what (collector's office was it sent? If no, state (a) Name and address entered at head of that return (b) Name and address of your taxable period? **Single** 6. If not, were you on the last day of your taxable period supporting one or more persons living in your household who are closely related to you by blood, marriage, or adoption? **None**
3. Is this a joint return of husband and wife? **No** (b) Exemptions claimed, \$ **2,900.00**

## INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) **United States Government, Washington, D.C.** \$ **12,000.00**
2. Income from Business or Profession. (From Schedule A)
3. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds (Corporation bonds 2% tax paid **116,464.33**)
4. Income from Partnerships, Fiduciaries, etc. (State name and address of partnership, etc.) **Union Tr. Co. of Pgh., Liquidating Act., A. Overholt & Co., 715 Frick Bldg** **16,543.11**
5. Rents and Royalties. (From Schedule B) **JR. A. W. Mellon, Trustee, 514 Smithfield St., Pittsburgh, Pa.** **10,655.46**  
(This last item will be reported on Form 1041 as \$40,499.62 but \$19,999.92 was paid to me in cash as rent and is in my Schedule B)
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C) **1,222.64**
7. Dividends on Stock of Domestic Corporations
8. Taxable Interest on Liberty Bonds, etc. (From Schedule D) **2,604.63**
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income.)
- (a) Foreign Corporations **6,744.20**
- (b) Sundry refunds **3,133.35**
- (c) Sale of rights, Etc. **44.30**

## DEDUCTIONS

10. TOTAL INCOME IN ITEMS 1 TO 9 **260,982.17**
11. Losses by Fire, Storm, etc. (Explain in Schedule F)
12. Interest Paid **None**
13. Taxes Paid **563,705.39**
14. Bad Debts (Explain in Schedule G)
15. Contributions. (Explain in Schedule G)
16. Other Deductions Authorized by Law. (Explain in Schedule G)
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16 **1,062,653.34**
18. NET INCOME (Item 10 minus Item 17) **9,939,688.53**

## COMPUTATION OF TAX

19. Net Income (Item 18 above) **9,939,688.53**
20. Less: Dividends (Item 7 above) **260,982.17**
21. Taxable Income on Liberty Bonds, etc. (Item 8 above) **1**
22. Personal Exemption and Credit for Dependents **2900.00**
23. TOTAL OF ITEMS 20, 21, AND 22 **None**
24. Balance (Item 19 minus Item 23)
25. Amount taxable at 4% (not over \$4,000)
26. Balance taxable at 8% (Item 24 minus Item 25)

In computing tax for a fiscal year, use the following:



**SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION. (See Instructions.)**

GROSS BUSINESS INCREASES	
1. Total increase from business operations Cash or deposit bank	
2. Labor	
3. Materials and supplies	
4. Merchandise bought for sale	
5. Other costs (for price less taxes and amounts below or on separate sheet)	
6. F. is inventory at beginning of year	
7. Totals (Lines 2 to 6, inclusive)	3
8. Less inventory at end of year	
9. Net Cash or Gross Profit (Line 7 minus Line 8)	9
10. Salaries and wages not reported in "Labor" on line 2 (see instructions)	
11. Rent on business property in which taxpayer has no equity	
12. Interest on business indebtedness to others	
13. Taxes on business and business property	
14. Depreciation, wear and tear, obsolescence, depletion, and property losses (explain below)	
15. Bad debts arising from sales or professional services	
16. Other expenses (list principal items and amounts below or on separate sheet)	
17. Totals (Lines 10 to 16, inclusive)	
18. Total Decreases (Lines 9 plus Line 17)	
19. Net Income (Line 9 minus Line 18) (Enter as item 2)	

**SCHEDULE B--INCOME FROM RENTS AND ROYALTIES.** (See Instructions b.)

1. Name of Factory.	2. Amperes Required.	3. Cost, up Value March 1, 1912.	4. Depreciation and Insurance.	5. Repairs.	6. Other Expenses.	7. Net Income (Enter as Item 5).
Schedule attached						

State estimated life of property;  
and depreciation previously taken

**SCHEDULE C--PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.** (See Instructions 6.)

1. Name of Property.	2. Date Acquired.	3. Amount Received.	4. Description.	5. Cost.	6. Value March 1, 1911.	7. Acquisition. (Transfer or purchase).	8. Net Profit. (Entry on Item 6.)
Liberty bonds	Jan 1922	\$2,959 60		\$2,973 20			\$13 60
Capital stock	Dec 1920	\$9,510 00		72,125 00			12215 00

**SCHEDULE D—CAPITAL NET GAIN FROM SALE OF ASSETS HELD FOR MORE THAN TWO YEARS. (Optional, see Instructions)**

1. Kind of Property.	2. Date Acquired.	3. Date Settled.	4. Amount Received.	5. Cash.	6. New Gain.	7. New Tax of 17 1/2 as Item 20.
Capital		Sept. '22	443677 60	543551 41		99366 19

If not acquired by purchase, state how acquired.

**SCHEDULE E—TAXABLE INTEREST ON LIBERTY BONDS, ETC.** (See Instructions A.)

1. OPERATIONS OF THE UNITED STATES SINCE SEPTEMBER 1, 1917. (Wholly exempt from normal tax, but subject to surtax as legacies over exemptions specified.)				Exemption (Aggregate Principal Amount.)		A. PRINCIPAL AMOUNT IN EXCESS OF EX- EMPTIONS RECEIVED IN RETURN THEREON IN COLUMNS 2, 3, AND 4.		B. INTEREST ON PAID CAPITAL AMOUNT IN EXCESS OF EXEMPTIONS.	
2. 100,000.	3. 100,000.	4. 100,000.	5. 100,000.	6. 100,000.	7. 100,000.	8. 100,000.	9. 100,000.	10. 100,000.	11. 100,000.
(a) First Liberty Loan Second Converted 4½ Bonds									
(b) First and Second, 4½, and First, Second, Third, and Fourth 4½									
(c) Treasury 4½ Bonds, Treasury Certificates, Treasury and War Savings Certificates									
(d) Victory Liberty Loan 4½ Notes, and Treasury Notes									
TOTAL TAXABLE INTEREST (If you have bought or sold during the year stock, bonds, or other holdings by periods). (Enter as item 8)									

**SCHEDULE F. - PLANATION OF LOSSES BY FIRE, STORM, ETC., (See Instruction 11.)**

[illegible]

**SCHEDULE C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 4, 14, AND 16.**

#14. Half the debt of Robt. Grace Contracting Co. (balance in R. B. Hallen's Return)	\$364.497.98
Half the loss on note V.T. F. Inventory, unsalable (Do.)	\$25.00
#16. Office expenses, salaries, rental, local expenses, etc.	\$ 86,521.77
Investment in Robt. Grace Contracting Co. - 1938	\$1,000.00

I swear (or affirm) that this return contains a true and correct statement of my/our knowledge and belief, to the best of my knowledge and belief, it is true and complete return made by me/for the taxable period or period, pursuant to the foregoing provisions of the Internal Revenue Code.

Seems to me that the only way to get the best of both worlds is to have a system that is both simple and efficient. I think that's what you're looking for. I think that's what you're looking for. I think that's what you're looking for.

Nevidzher, Dmitry Evgenyevich

(Address of individual or agent.)

*Bill of Exceptions—Defendant's Offers.*

Thereupon defendant's counsel offered in evidence, separately, duly certified photostatic copies of original individual income tax returns as follows:

1. Income tax return filed by A. W. Mellon for 1923, marked Defendant's Exhibit "KK".
2. Income tax return filed by A. W. Mellon for 1921, marked Defendant's Exhibit "LL".
3. Income tax return filed by Richard B. Mellon for 1921, marked Defendant's Exhibit "MM".
4. Income tax return filed by Richard B. Mellon for 1922, marked Defendant's Exhibit "NN".
5. Income tax return filed by Richard B. Mellon, with schedules attached, for 1923, marked Defendant's Exhibit "OO".

Which said Exhibits "KK", "LL", "MM", "NN", and "OO" so offered and admitted in evidence are in words and figures as follows (The schedules containing itemization of rents, royalties, charitable contributions and explanations of losses claimed as arising out of transactions with one Guffey are here omitted):

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*Bill of Exceptions—Defendant's Exhibits "KK",  
"LL", "MM", "NN" and "OO".*

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**Defendant's Exhibit "KK".**

(Pages 521 a, 521 b, 521 c.)

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**Defendant's Exhibit "LL".**

(Page 522.)

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**Defendant's Exhibit "MM".**

(Pages 523 a, 523 b, 523 c.)

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**Defendant's Exhibit "NN".**

(Pages 524 a, 524 b.)

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**Defendant's Exhibit "OO".**

(Pages 525 a, 525 b, 525 c.)







SCHEDULE A—INCOME FROM A BUSINESS OR PROFESSION. (See Instructions 1 and 2.)

Other Estimated Deductions:

10. Including and wages not reported as "labor" on line 2 (see Instruction 1) \_\_\_\_\_

11. Rent on business property in which taxpayer has no equity \_\_\_\_\_

12. Interest on business indebtedness to others \_\_\_\_\_

13. Taxes on business and business property \_\_\_\_\_

14. Repairs, wear and tear, obsolescence, depletion, and property losses (explain below) \_\_\_\_\_

15. Bad debts arising from sales or professional services \_\_\_\_\_

16. Other expenses (list principal items and amounts below or on separate sheet) \_\_\_\_\_

17. Totals (Lines 10 to 16, inclusive) \_\_\_\_\_

18. TOTAL DEDUCTIONS (Line 9 plus Line 17) \_\_\_\_\_

19. Net Income (Line 1 minus Line 18) (Enter as Item 2) \_\_\_\_\_

State amount of salary to self included in Item 19 \_\_\_\_\_

Explanations of deductions attempted on Lines 6, 14, and 16 \_\_\_\_\_

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES. (See Instruction 5.)

1. Kind of Payment.	2. Amount Received.	3. Cost, on Value Made 1, 1913.	4. Depreciation and Depletion.	5. Royalty.	6. Other Expenses.	7. Net Income (Enter as Item 3)

See attached schedule

State estimated life of property, and depreciation previously taken \_\_\_\_\_

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instructions 6 and 7.)

1. Kind of Payment.	2. Basis Acquired.	3. Amount Received.	4. Depreciation.	5. Cost.	6. Net Profit (Enter as Item 4)

None

acquired by purchase, or acquired \_\_\_\_\_

SCHEDULE D—CAPITAL GAIN FROM SALE OF ASSETS HELD FOR MORE THAN TWO YEARS. (Optional—see Instruction 8.)

1. Kind of Payment.	2. Basis Acquired.	3. Amount Received.	4. Depreciation.	5. Cost.	6. Net Profit (Enter as Item 5)

If not acquired by purchase, how acquired \_\_\_\_\_

SCHEDULE E—TAXABLE INTEREST ON LIBERTY BONDS, ETC. (See Instruction 9.)

1. Description of Liberty Bonds or Other Taxable Securities.	2. Amount Received from Sale or Redemption to Date 1, 1913.	3. Amount Owed to Date 1, 1913, on Basis of Redemption to Date 1, 1913.	4. Interest to Date 1, 1913, on Basis of Redemption to Date 1, 1913.	5. Total Taxable Interest.
(a) First Liberty Loan General Obligation 4½% Bonds.	\$20,000			
(b) Liberty 4½% and 4½% Bonds, Treasury 4½% Bonds, Treasury Certificates, and Treasury (War) Savings Certificates.	5,000			
July 4½% and 4½% Bonds.	125,000			
July 4½% Notes, and Treasury Notes.				
TOTAL TAXABLE INTEREST (If you bought or sold during year, show amount during holding by date)				

(Enter total of columns 4 and 5 on Item 6)

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 11.)

1. Kind of Payment.	2. Basis Acquired.	3. Cost, on Value Made 1, 1913.	4. Depreciation.	5. Amount Received.	6. Insurance.	7. Salvage Value.

SCHEDULE G—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 15, AND 16.

Explanations of deductions claimed in Items 1, 14, 15, and 16. See attached schedule. #16. Made of salaries of clerks, rents of office and sundry office expenses.

AFFIDAVIT

I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct statement of the facts and circumstances as to the matters herein stated, and that the same are true to the best of my knowledge and belief, and that I am not a partner, officer, or agent of the taxpayer.

Subscribed before me this 11th day of \_\_\_\_\_ 1918.

J. H. Marks, Notary Public for the State of New York.

J. P. Mello, Registered Professional Accountant.

(Address of Notary Public or Agent)



A. W. HELLON

FOR MORE THAN TWO YEARS.

	9.	Net Gain
Value		
March 1, '13	1,525,135.00	2,136.10
		41,145.00
		51,510.00
		515,799.40
		597,669.50
		6105,934.75
		24.51
		91,445.00
		47,440.00
		11,440.00
		595,504.04

1910

Balance of 1909 carried forward to 1910

-----

Stock  
Stock  
Stock  
Real Estate

1909 1909  
1909 1909  
1909 1909  
1909 1909

400.00  
200,000.00  
200,000.00  
27,504.00

200.00  
200,000.00  
200,000.00  
15,000.00

277.44  
100,000.00  
277,000.00  
595,504.04



349  
Do not write in this  
FIRST PAYMENT  
Captain's Name

IN

000000

1951

PENNSYLVANIA  
Circled as above district

CASE CHECK U.S. CREDIT  
Numbered by

United States

13th March

John H. H. H. H.

A. D. H. H.

(Address of the person)

2 to 10

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IF RETURN MUST BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE FOR YOUR DISTRICT ON OR BEFORE MARCH 15, 1933

IF FOR A PERIOD OTHER THAN A CALENDAR YEAR THE RETURN SHOULD BE FILED ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH FOLLOWING THE CLOSE OF SUCH PERIOD

FOR RETURN OF TAX ON STOCKS, BONDS, AND OTHER INVESTMENTS AND TAX ON INCOME EXCEPT TAX ON

FOR CALENDAR YEAR END 305876

Or for period began 1920, and ended 1931

PRINT NAME AND ADDRESS FULLY BELOW

RICHARD E. MELLON

6500 FIFTH AVENUE

PITTSBURGH, PA.

OCCUPATION, PROFESSION, OR KIND OF BUSINESS MAKER

I swear (or affirm) that this return, including the accompanying schedules and attachments, is a true and complete return made in good faith, for the taxable period or periods mentioned by me

Sworn to and subscribed before me this third day of March

Notary Public.

6500 Fifth Ave., Pittsburgh, Pa.

1. Are you a citizen or resident of the United States? **YES** 2. If you filed a return for 1929, to what Collector's office was it sent? **PITTSBURGH, PA.** 3. In this, what return of income and other taxes? **19**
4. If not, is a separate return being filed by your husband or wife? **YES** If so, state: (a) Name and address **JENNIE E. MELLON, 6500 FIFTH AVE., PITTSBURGH, PA.** (b) Amount of income and other taxes? **2400.00**
5. Were you married and living with husband or wife on the last day of your taxable period? **YES** 6. If not, were you on the last day of your taxable period supporting one or more persons living in your household who are clearly related to you by blood, marriage, or adoption? **-----**

7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support mentally or physically defective were receiving their chief support from you on the last day of your taxable period? **-----**

### INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received.)

SEE SCHEDULE ATTACHED.

8,143.33

2. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds.

211,333.02

3. Income from Partnerships, Fiduciaries, etc. (State name and address of partnerships, etc.)

1088

7. Profit (or loss) from Sale of Stocks, Bonds, etc. SEE SCHEDULE ATTACHED.

9. Taxable Interest on Liberty Bonds, etc.

10. Other Income (including dividends received on stock of foreign corporations). (State name of (names) corporation.)

(Dividend on Foreign Stocks, Bonds, etc.) Liquidated David, Pittsburgh, Pa.

on Note written off \$75.00 - Percentage lost \$100.00

(b) Interest ground \$375.00 - Miscellaneous \$100.00

11. TOTAL INCOME IN ITEMS 1 TO 10 (Less losses shown therein, if any)

### DEDUCTIONS

12. Interest Paid (not including interest deducted above)

13. Taxes Paid (not including taxes deducted above)

14. Losses by Fire, Storm, etc.

15. Contributions SEE SCHEDULE ATTACHED \$109,929.86

16. Bad Debts (not including bad debts deducted above)

17. Other Deductions Authorized by Law Traveling Exp., etc.

18. TOTAL OF ITEMS 12 TO 17

19. NET INCOME (Item 11 minus Item 18)

211,333.02

20. Net Income (Item 19 above)

21. Less: Dividends (Item 8 above)

22. Taxable Interest on Liberty Bonds, etc. (Item 9 above)

23. Personal Exemption and Other Dependents

24. TOTAL OF ITEMS 21, 22 AND 23

25. Balance (Item 20 minus Item 24)

26. Amount taxable at 4% (not over \$4,000)

27. Balance taxable at 8% (Item 25 minus Item 26)

- Checks and drafts will be accepted only if payable on pay.

### COMPUTATION OF TAX

425,604.25

1,051,424.45

1,051,424.45

1,051,424.45

1,051,424.45

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1,051,424.45

1,051,424.45



RESERVES, WAGES, ETC.

			Amount.
Western Co. of America, Pittsburgh, Pa.	-	Director	\$ 5,000.00
Federal Reserve Bank, Pittsburgh, Pa.	-	Director	30.00
Pittsburgh Coal Co., Pittsburgh, Pa.	-	Director	100.00
Pennsylvania Water Co., Wilkinsburg, Pa.	-	Director	5.00
A. Overholt & Co., Pittsburgh, Pa.	-	Managing Partner.	208.33
Union Trust Co. of Pgh., Pittsburgh, Pa.	-	Director,	500.00
Gulf Oil Corporation, Pittsburgh, Pa.	-	Director,	100.00
Union Savings Bank, Pittsburgh, Pa.	-	Director,	200.00
Mellon National Bank, Pittsburgh, Pa.	-	Director,	200.00
			<hr/>
			\$ 6,343.33
			<hr/>
Ligonier Valley R.R.Co., Ligonier, Pa.	-	Secretary.	1,800.00
			<hr/>
			\$ 8,143.33

A. Overholt's & Company, 1111 Broadway, New York

West Overland Division, 1111 Broadway, New York

J.R. A.H. B. 1111 Broadway, New York



9/29/54 H.T.

# INCOME TAX RETURN

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SERIAL NUMBER

FILE CODE . N

FIRST PAYMENT

Numbered by

of the Yearly Period

(Contributor's Name)

RECEIVED  
DIRECTOR OF REVENUE  
PITTSBURGH, PA.

1. Is this a joint return of husband and wife? **NO**  
**PITTSBURGH, PA.**  
**113010**  
**9,135 00**  
**107,100 00**  
**2,000.00**

2. Has any of your taxable income exceeding one or more payments of \$100 or more been subject to your by bank, mortgage, or otherwise?

3. If so, state the amount of such payments

4. If so, state the date of such payments

5. If so, state the name of the payee

6. If so, state the amount of such payments

7. If so, state the date of such payments

8. If so, state the name of the payee

9. If so, state the amount of such payments

10. If so, state the date of such payments

11. If so, state the name of the payee

12. If so, state the amount of such payments

13. If so, state the date of such payments

14. If so, state the name of the payee

15. If so, state the amount of such payments

16. If so, state the date of such payments

17. If so, state the name of the payee

18. If so, state the amount of such payments

19. If so, state the date of such payments

20. If so, state the name of the payee



1. Total Income Tax Paid  
Comp or Gross Basis

2. Excess

3. Amount

4. Total

5. Plus

6. Total

7. Total

8. Total

9. Total

10. Total

11. Total

12. Total

13. Total

14. Total

15. Total

16. Total

17. Total

18. Total

19. Total

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21. Total

22. Total

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90. Total



# INDIVIDUAL INCOME TAX RETURN

2246  
TAX LIABILITY  
INCREASED

PENALTY 944  
TAX CREDIT 744

U. S. AIR MAIL 70100

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SERIAL NUMBER

FILE CODE 348

FIRST PAYMENT

Examined by

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1. Name of decedent: **None.**

2. Date of death: **None.**

3. Name of executor: **None.**

4. Name of administrator: **None.**

5. Name of surviving spouse: **None.**

6. Name of surviving child: **None.**

7. Name of surviving grandchild: **None.**

8. Name of surviving parent: **None.**

9. Name of surviving sibling: **None.**

10. Name of surviving issue: **None.**

11. Name of surviving issue of issue: **None.**

12. Name of surviving issue of issue of issue: **None.**

13. Name of surviving issue of issue of issue of issue: **None.**

14. Name of surviving issue of issue of issue of issue of issue: **None.**

15. Name of surviving issue of issue of issue of issue of issue of issue: **None.**

16. Name of surviving issue of issue of issue of issue of issue of issue of issue: **None.**

17. Name of surviving issue of issue of issue of issue of issue of issue of issue of issue: **None.**

18. Name of surviving issue of issue of issue of issue of issue of issue of issue of issue of issue: **None.**

19. Name of surviving issue of issue of issue of issue of issue of issue of issue of issue of issue of issue: **None.**

20. Name of surviving issue of issue of issue of issue of issue of issue of issue of issue of issue of issue of issue: **None.**

PART I—INCOME FROM RENT, ROYALTIES, AND OTHERS (See Instruction 1.)			
1. Name of decedent	2. Description of property	3. Gross income	4. Net income (after deduction of expenses)
			49879.44

PART II—INCOME FROM RENT, ROYALTIES, AND OTHERS (See Instruction 1.)			
1. Name of decedent	2. Description of property	3. Gross income	4. Net income (after deduction of expenses)
			49656.75

PART III—INCOME FROM RENT, ROYALTIES, AND OTHERS (See Instruction 1.)			
1. Name of decedent	2. Description of property	3. Gross income	4. Net income (after deduction of expenses)
			351187.25

PART IV—INCOME FROM RENT, ROYALTIES, AND OTHERS (See Instruction 1.)			
1. Name of decedent	2. Description of property	3. Gross income	4. Net income (after deduction of expenses)
			351187.25

PART V—INCOME FROM RENT, ROYALTIES, AND OTHERS (See Instruction 1.)			
1. Name of decedent	2. Description of property	3. Gross income	4. Net income (after deduction of expenses)
			351187.25

**AFFIDAVIT.**

I, **Richard P. Miller**, being duly sworn, depose and say that the foregoing is a true and correct statement of the income of the decedent for the year 1954, and that the same is true and correct to the best of my knowledge and belief, in accordance with the provisions of the Internal Revenue Code of 1939, as amended.

Subscribed and sworn to before me this **10th** day of **April**, 1955.

Notary Public for the State of **California**.

**Richard P. Miller**  
6500 First Avenue, Los Angeles, Ca.



**MEMORANDUM - CAPITAL NET GAINS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS.**

Kind of Investment	Date Acquired	Date Sold	Amount Received	Representation	Cost	Value 3/1/23, Incr. etc.	Subseq. Incr. etc.	Net Gain.
Stock, -A. V. Mellon	1923	1925	50,000.00	---	100,000.00			50,000.00
Stock, -A. V. Mellon	---	1923	1,257,500.00	---		1,326,125.00		68,625.00
Stock, -A. V. Mellon	1923	1925	1,257,500.00		597,595.20			660,000.00
Real Estate	1920	1925	27,700.00	4,070.50	23,000.00			4,670.50
<b>\$ 2,545,905.00 4,070.50 1,013,595.20 660,000.00 4,670.50</b>								
<b>A. V. MELLON AND E. J. MELLON JOINT OWNERS OF ABOVE.</b>								
<b>E. J. MELLON'S ONE-HALF.</b>			<b>\$ 1,573,491.80</b>	<b>2,035.45</b>	<b>506,197.00</b>	<b>642,067.50</b>	<b>2217.45</b>	<b>135,904.75</b>
Stock, -Acheson	1905	1925	300,000.00			163,550.00		136,450.00
Stock, -Carborundum	1905	1925	225,000.00			272,500.00	(Loss)	47,500.00
Stock, -E. P. S. & T.	1921	1925	10,800.00		7,762.50			3,037.50
Stock, -H. H. Gurn Cl.	1905	1925	100.00		100.00			90.00
<b>\$1,709,471.80 2,035.45 \$34,030.10 104,597.50 2317.45 151,127.25</b>								



*Bill of Exceptions—Defendant's Exhibit "PP".*

---

The omitted portions of said Defendant's Exhibits "JJ", "KK", "LL", "MM", "NN" and "OO", together with the parts set forth above, are also incorporated herein by reference and made part hereof, the original said exhibits in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibits be sent up in their original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "PP", being certified photostatic copy of revenue agent's report dated September 10, 1925, submitted by Clarence B. Eastwood, revenue agent, *in re* Richard B. Mellon for the year 1921.

That the full purport and substance of said exhibit so offered and admitted in evidence is contained in the parts thereof which are in words and figures as follows:

**Defendant's Exhibit "PP".**

(Pages 526 a-526 e.)



# TREASURY DEPARTMENT

PITTSBURGH  
REVENUE NO. 3253

INTERNAL REVENUE SERVICE

OFFICE OF  
INTERNAL REVENUE AGENT IN CHARGE  
Pittsburgh Division

Sept. 10, 1935.

In Re-- Richard B. Mellon,  
514 Smithfield St.,  
Pittsburgh, Pa.

Examining Officer	Exam. Commenced	Exam. Completed	Time
O. B. Eastwood	Sept. 8, 1935	Sept. 9, 1935	2 days

ALL COMPUTATIONS AND CALCULATIONS  
VERIFIED BY COMPTON METER  
BY THE OFFICE OF REVENUE AGENT IN CHARGE

Internal Revenue Agent in Charge,

Pittsburgh, Pa.

PROTESTED

An examination of the books and records of the above named individual for the years 1921 discloses the following in regard to his Income Tax Liability:

## Summary

1921 Overassessment \$ 474.15

Exemption Status:-- All taken by Mrs. Jennie K. Mellon.

Business:-- Banker and financier.

Basis for Comparison:-- Retained copy of Original Return together with Photostat for 1921.

Authority for Examination:-- 1921 Photostat.

Remarks: -- For details of amounts referred to in this report as Joint Account, see Schedule 2 to 2-E inclusive attached to report of Andrew W. Mellon, brother of the taxpayer.

102

R. B. Mellon.

—2—

The findings of this report have been discussed with Mr. Geo. Ashplund representing the taxpayer who withholds decision.

Reports have been filed on Partnerships etc.

Respectfully submitted,

Clarence B. Eastwood,  
Revenue Agent.

23



INDIVIDUAL

Name R. B. Mellon

Schedule No. 1  
Years 1921-1922-1923-1924  
BLOCK ADJUSTMENTS

	RETURN	ADDITIONS	REDUCTIONS	CORRECTED WHEN NEEDED
1	Salaries.	8,143.33 ✓	✓	8,143.33 ✓
2	Interest	211,293.02		211,293.02
3	Partnerships etc.	(3,315.37) 223.33 ✓		(3,092.04) ✓
4	Rents.	(26,835.94) ✓	✓	(26,835.94) ✓
5				
6				
7	Sales securities	8,135.98 8,437.50		16,573.49 ✓
8	Dividends	1,051,424.45		1,051,424.45 ✓
9				
10	Other Income	7,939.35	10,731.00	(2,791.65) ✓
11		1,256,784.93 8,660.83 10731.00		1,254,714.66
12	Interest	599,963.01		599,963.01
13	Taxes	117,655.63		117,655.63
14				
15	Contributions	75,283.10 154.53		75,128.57 ✓
16				
17	Other Deductions	37,278.96 1,040.00		36,238.96 ✓
18		830,180.60 1,194.53		828,986.07
19		426,604.23	875.64	425,728.59
	Net income subject to ordinary taxes			
	Add: Capital			
	Net gain			
	Total income			

Wife's net gain or loss ..... \$  
Husband's net income or loss ..... \$

R.B. Mellon.

Schedule 1- A. Continued.

Line 3-- Reported loss 3,315.37

<u>Amended</u>	<u>Original</u>
{ 32,503.93 } ✓	{ 32,727.26 }
{ 10,027.58 }	{ 10,027.58 }
39,439.47	39,439.47
<u>3,092.04 ✓</u>	<u>3,315.37</u>

A. Overholt and Co.

West Overton

J. R.--A.W. and R. Mellon

Net Loss

See reports on the above.

Schedule 1- B. 1921

Line 4. Reported loss \$ 26,835.94 corrected Same.

Income:

Joint Account \$ 36,766.29  
W.L.Mellon # 2 102.87  
Agents records--various properties 13,387.13  
Fifth Ave. & Shady--net (1,523.08)  
Diamond St. 4,526.08  
\$53,259.29

Expenses:

Joint Account 77,938.13  
W.L.Mellon #2 2,157.10

Net Loss 80,095.23  
\$26,835.94 ✓

Line 5. Reported none--corrected none.

Line 6. " " "

Line 7. Reported 8,135.99 Corrected 16,573.49

<u>Acquired</u>	<u>Cost.</u>	<u>S. P.</u>	<u>Profit or Loss</u>
Hukill Hunter	See Joint Acct.		{ 32,967.00 }
Penn Mining	" "		{ 983.51 }

3700 Amer. Loco.	1920-21	293,017.50	342,309.50	49,292.00
200 "	1920	17,930.00	19,162.00	1,232.00
		Net Profit	<u>16,573.49</u>	

--7--

R.B.Mellon.

Schedule 1- E-1921

Line 16. Reported none--corrected none.

Line 17. Reported 37,278.86 corrected as follows:

	<u>Original</u>	<u>Amended.</u>
Joint Acct. expense	32,688.24	21,648.24
Office Expense	11,176.08	11,176.08
W.L.Mellon # 2.	1,507.02	1,507.02
Miscellaneous	1,907.52	1,907.52
Total.	<u>37,278.86</u>	<u>36,238.86</u>

Schedule # 2. Computation of Tax.

Net Taxable Income.  
Less--Dividends

\$ 425,728.59  
1,051,424.45

-0-

Surtax on 425,728.59  
Less 2% Tax paid at source  
Tax Liability  
Less Paid per return

216,719.01  
1,826.87  
214,892.14  
215,366.39

Overassessment

\$ 474.15

2% Tax free Int. per report  
Joint a/o  
Direct

-0-  
94,504.07  
1,089.50  
95,593.57

Less 1/3 I.R.S. Joint a/o

4,250.00  
91,343.57

Net  
2% of above.

\$ 1,876.05



*Bill of Exceptions—Defendant's Offers.*

---

The omitted portions of said Defendant's Exhibit "PP", together with the parts set forth above, are also incorporated herein by reference and made part hereof, the original said exhibit in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibits be sent up in their original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "QQ", being certified photostatic copy of a letter dated March 26, 1926, to the Commissioner of Internal Revenue from W. P. Mays, Supervising Internal Revenue Agent, transmitting internal revenue agent's report dated March 6, 1926, submitted to the internal revenue agent in charge, *in re* Richard B. Mellon for the years 1922 and 1923.

That the full purport and substance of said exhibit so offered and admitted in evidence is contained in the parts thereof which are in words and figures as follows:

**Defendant's Exhibit "QQ".**

(Pages 528 a-528m.)



# LETTER TRANSMITTING REPORT OF FIELD EXAMINATION FROM INTERNAL REVENUE AGENT IN CHARGE TO THE COMMISSIONER

Pittsburgh DIVISION Mar. 26, 1926.

Taxpayer Richard B. Mellon  
Transcript address:

Street 5800 Fifth Avenue State Pa.  
City Pittsburgh Filing district 23rd Serial No. 1260

Present name and address, if different:  
Name 514 Fourth St. (Broadway)

Street \_\_\_\_\_ State \_\_\_\_\_  
City \_\_\_\_\_

RECEIVED		
1922	1,342.58	
1923		7,745.33
<b>Net Worth</b>		<b>\$ 6,422.81</b>
Payable		

Commissioner of Internal Revenue,  
Washington, D. C.

Attention: Field Internal Audit Division  
(From Book-Records Division)

Enclosed herewith is a report of Internal Revenue Agent W. D. Shannon.

Said Shannon, covering his investigation of the above-named (suspect) (individual) Shannon for the years 1922 to 1923, inclusive, indicating a net overstatement

of \$6,422.81. Shannon  
Copy of this report beginning with the table of contents has been furnished the taxpayer.  
The subsequent action taken on this report after furnishing the taxpayer a copy thereof has been as follows:

Taxpayer consented to the findings of revenue agent within the 30-day period and signed statement consenting to agreement as to net overstatement.

Special return is not made as follows:

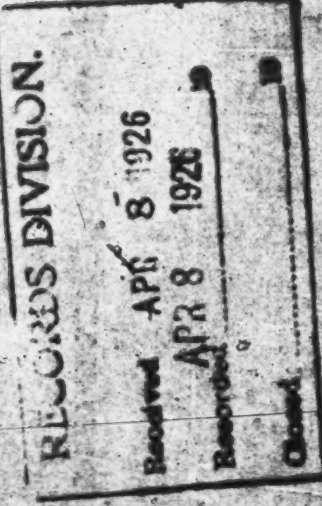
Class of case: Individual

Attached hereto are: Interdubitory, 2 pages; report, 2 pages; statement is statement, Agreement 60%, 6.2% for 1922 & 1923.

Very truly yours,  
Special Agent in Charge

W.D. Shannon

One hundred dollars of this case has been collected.



**TREASURY DEPARTMENT**

**INTERNATIONAL PERSONNEL SERVICE**

PITTSBURGH, PA.

March 6, 1938.

In care Richard B. Mellon,  
2800 Fifth Ave.,  
Pittsburgh, Pa.

OFFICE OF  
A. J. BROWN, AGENT IN CHARGE  
ALBANY, NEW YORK

0001908  
Bromfield

W. O. Shanon

**Examination**  
**Continued**

January 19, 1923

Transmittion	Completed
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March 6, 1926

2170

18 days

Internal Revenue Agent in Charge

Pittsburgh, Pa.

ALL COMPARISONS AND CALCULATIONS OF PROTECTED

2000 CONVENTION AND  
EXHIBITION CENTER

In examination of the books and records of the above-named individual for the years 1922 and 1923 disclosed the following in connection with his income tax liability:

## SUMMARY

Year	Additional Tax	Overassessment	Form No.	Coll. Dist.
1922	1,342.53	0		
1923	0	7,765.33		
Totals	1,342.52	7,765.33		
Less		1,342.53		
Net Overassessment		6,422.81		

Exemption Status: Married living with wife (Jennie K. Mellon) at 6500 Fifth Ave. Pittsburgh, Pa.

Wife (Jennie K. Mellon) files separate return and uses the full exemption in both years.

**Business: Banker**

**Authority for Examination:** Original returns for the years 1922 and 1923.

Basis for Comparison: Original returns for the years 1922 and 1923 and they are herewith returned. Attention is called to the discrepancy between the income as shown on the return, and this report, and that shown on Forms 1099 and 7839. This is due to the fact that the taxpayer keeps his books on the Cash Receipt and Disbursement basis, and the income shown in this report is the income received and entered upon the books during the current year. The largest and principal items being supported by schedules which are made a part of this report



In Re: Richard B. Mellon

Income is derived from Salaries, Interest on Bonds, Notes and Mortgages, Income from Fiduciary and Partnerships, Profits from Sales, Income from Rental Properties and Dividends on Stock. The changes effecting the income for 1922 are as follows:

Decrease in Tax - free Bond Interest, said amount being added to the item of other Bond Interest. Increased Income from A. Overholt & Co. (Partnership) and increase in income from J. R. - A. W. & R. B. Mellon, Trustees.

Changes for the year 1923 are as follows:

Decrease in Tax, free bond interest, same being added to item of other bond interest. Increased Loss from Partnership (A. Overholt & Co.) Decrease in Taxes Paid. Contributions increase, and Increase in Capital Net Gain from Sale of Capital Assets, and error of not considering the Capital Net Gain in computing the 15% limitation for Contributions.

The changes in this report have been discussed with D. J. Hicks, Agent for Richard B. Mellon who approves the same, and who has signed Form 874.

M. C. Shannon,  
Internal Revenue Agent.

In Re: Richard B. Mellon

-1-

Schedule No. 1  
Year 1922

Block Adjustments

	Return	Additions	Deductions	Corrected
1. Salaries	8,115.00			8,115.00 ✓
2. Income from Business	None			None
3. Interest on War Free Gov. Bonds	499,005.89			499,005.89 ✓
a " " other Bonds,			4,650.00	94,355.89 ✓
Wages, etc.	80,134.50	4,650.00		84,784.50 ✓
4. Income from Partnerships, etc.				
a Union Trust Co. liquidating Aet.	16,548.11	2,935.07		19,483.18 ✓
b Union Trust Co. liquidating Aet.				
c for West Overton Distilling Co	10,655.46			(10,655.46) ✓
J.R.-A.W.A.R.B. Mellon, Trustees	40,438.61			40,438.61 ✓
5 Rents & Royalties	(34,459.06)	-5.00		(34,459.06) ✓
6 Profit from Sales	179,634.00			179,634.00 ✓
7 Dividends on Stock	1,292,555.77			1,292,555.77 ✓
8 Tax. Lib. Bond Interest	0			0 ✓
9 Other Income				
a Foreign Stocks	6,318.50			6,318.50 ✓
b Insurance Refund	44.10			44.10 ✓
c Miscellaneous	201.00			201.00 ✓
10 Total Income	1,677,875.96			1,690,816.03 ✓
11 Losses by Fire, Storm, etc.	None			None
12 Interest Paid	807,472.13			807,472.13 ✓
13 Taxes Paid	125,185.80			125,185.80 ✓
14 Bad Debts	367,186.72			367,186.72 ✓
15 Contributions (15%)	59,218.43			59,659.44 ✓
16 Other Deductions			441.01	
a Grace Contracting Co.	30,000.00			30,000.00 ✓
b Charter surrendered (200 shrs. @ 100.00)				
Office Expense - Salaries				
Rents - Traveling Expense	53,107.95			53,107.95 ✓
17 Total Deductions	1,442,171.03			1,442,612.04 ✓
18 Net Inc. subject to Ordinary Taxes	235,704.93	7,590.07	5,091.01	238,203.99 ✓
Add Capital Net Gain	99,866.19			99,866.19 ✓
Total Income	335,571.12	2,499.06		338,070.18 ✓
Wife's Income reported on separate return				

54



c. Income from J. R. - A. W. & R. B. Mellon, Trustees. This item is increased \$5.00 due to clerical error in listing.

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In Re: Richard B. Mellon

Schedule 1-5

Year 1922 Form 1040

Explanation of ItemsItem 5 - Rents & Royalties

There are no changes in this item and a complete schedule of rental properties follows later in this report: The rates of depreciation, as used in the schedule, are the same rates used in previous reports and were accepted by the Department. Other Expenses in the schedule are made up from the accounts of Interest - Taxes and Commissions.

It will be noted that in the Schedule of Rents, items 1 to 43 inclusive are from the joint account of Andrew W. and Richard B. Mellon (1/2 each.)

Item 44 - Sundry - W. L. M. #2 - is from properties owned by W. L. - A. W. & R. B. Mellon, and the remaining items are properties owned by R. B. Mellon..

Schedule 1-6Item 6 - Profit from Sales - No Change

Kind	Acquired	Cost	Sale Price	P. or L.
Am. Locomotive Stock	1922	81,042.50	90,392.00	9,349.50
" "	1920	521,940.00	681,778.50	159,838.50
" "	1922	68,040.00	70,536.00	2,496.00
" "	1922	9,610.00	11,756.00	2,146.00
" "	1922	97,920.00	102,158.00	4,238.00
Interboro Rapid Transit	1921	9,837.00	11,403.00	1,566.00
Totals		788,389.50	968,023.50	179,634.00

Schedule 1-7Item 7 - Dividends on Stock

Reported on return \$1,292,555.77

Corrected \$1,292,555.77

See Schedule of Dividends

Schedule 1-8Item 8 - Taxable Liberty Bond Interest

Reported on return None

Corrected None

Schedule 1-9Item 9 - Other Income

a Dividends (Foreign Corporations)

b Insurance Refund

c Miscellaneous

	Return Corrected
a	6,318.50
b	44.10
c	201.00
Totals	6,563.60

Totals

6,563.60

56



In Re: Richard B. Mellon

-4-

Schedule 1-11

Item 11 - Losses by Fire, Storm, etc.  
Reported on return, None

Corrected None

Schedule 1-12

Item 12 - Interest Paid  
Reported on return \$907472.13

Corrected \$907472.13

Schedule 1-13

Item 13 - Taxes Paid  
Reported on return \$125185.80  
City, County and State Taxes  
Luxury Taxes  
Total

Corrected \$125185.80  
124,740.00  
445.80  
125,185.80

Schedule 1-14

Item 14 - Bad Debts  
Reported on return \$367,186.72  
Grace Contracting Company  
F.T.F. Lovejoy note - Uncollectible  
N. R. Horn "  
P. S. Bartoe "  
K. M. Lovejoy "  
J. M. Kelly "

Corrected \$367,186.72  
364,497.98  
425.00  
954.28  
500.00  
500.00  
409.46  
367,186.72

Total

The Robert Grace Contracting Company of Pittsburgh, Pa. was incorporated October 15, 1909 under the laws of Pennsylvania, with a Capital Stock of \$100,000.00 all issued for cash.

A. W. & R. B. Mellon owned jointly (600 shares @ \$100.00 on \$60,000.00) and they had loaned said company the sum of \$1,311,900.00 as will be herein after shown by Balance Sheet of said company. On October 13, 1922, the Grace Contracting Company liquidated, selling all the assets to the Mellon-Stuart Co. of this city for \$600,000.00 in cash, said cash being used to pay off preferred creditors - the said amount not being sufficient to pay off all indebtedness as shown by balance sheet as at December 31, 1922.

Summary of Loans

Capital Stock - A. W. & R. B. Mellon (1/2 each)

A. W. Mellon 30,000.00  
R. B. Mellon 30,000.00

Total \$60,000.00  
728,995.96

Joint Loans - A. W. & R. B. Mellon

A. W. Mellon 364,497.98  
R. B. Mellon 364,497.98

37

-5-

In Re: Richard B. Mellon

Balance Sheet as at December 31, 1921  
Robert Grace Contracting Company,  
Pittsburgh, Pa.

<u>Assets</u>	
Cash	1,281.84
Accounts Receivable	76,586.22
H. Kleinhaus Co.	4,650.62
Bills Receivable	341,157.37
H. Kleinhaus Co.	130,000.00
Interest in advance	12,842.26
Stock of Domestic Corpn.	200,000.00
" " Sub. Co's.	5,000.00
H. Kleinhaus Co.	95,000.00
Total Assets	<u>866,518.31</u>

<u>Liabilities</u>	
Accounts Payable	22,081.01
Contr. - Equip. - & Sup. Co.	5,000.00
H. Kleinhaus Co.	43.26
Bills Payable	1,311,900.00
Accrued Interest	613.34
Capital Stock	100,000.00
Surplus	<u>(623,119.30)</u>
Total Liabilities	<u>866,518.31</u>

Balance Sheet as at December 31, 1922

<u>Assets</u>	
Cash	2,589.23
Prepaid Interest	<u>2,710.77</u>
Total Assets	<u>5,300.00</u>

<u>Liabilities</u>	
Notes Payable	709,900.00
Accounts Receivable	20,900.00
Capital Stock	100,000.00
Surplus	<u>(825,500.00)</u>
Total Liabilities	<u>5,300.00</u>

Total Joint Loans to Robert Grace Contracting Co. by

A. V. & R. E. Mellon - 1/2 each	1,311,900.00
Less Payments	<u>582,904.04</u>
Balance due	728,995.96

Less Payments  
Balance due  
Andrew V. Mellon  
Richard E. Mellon

384,497.98
<u>384,497.98</u>

The other notes listed in schedule are uncollectible - no assets.

5



In Re: Richard B. Mellon

Schedule 1-15

Item 15 - Contributions

Reported on return \$59,218.43. Corrected \$59,659.44  
The income having been increased in the amount of \$2940.07, the taxpayer is allowed 15% of this item as an additional deduction under the head of Contributions as the Schedule of Contributions shown \$70,825.60:

Schedule 1-16

Item 16 - Other Deductions

a. Grace Contracting Company - Capital Stock - total loss as shown previously in this report. \$30,000.00

b. Office Expense - Salaries - Rents - Traveling Expenses \$53,107.95

Schedule 1-17

Item - Capital Net Gain taxable @ 12 1/2%

Kind

Topper's Company

Acquired	Cost	Sale Price	Profit
1914 - 1915	343,831.41	443,831.60	99,868.19

This stock was sold to the McClintock Marshall Construction Company in 1918, under an optional agreement - Optional and partial payment made in the year 1923 as above shown.

Capital Net Gain - \$99,868.19 @ 12 1/2% = \$12,483.27

Schedule 1-2

Year 1922 Page 1040

Computation of Tax

Total Net Income subject to ordinary taxes \$238,203.98

Less Income tax paid by wife-Jessie L. Mellon None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

Income subject to Special Tax 1,232,553.77

None

## Schedule 3

## DONATIONS

R.B. MELLON - CALENDAR YEAR 1922

Jan. 3	- Pittsburgh Goodwill Industries, Pittsburgh, Pa.	\$1,000.00
Feb. 6	- Western Penna. Humane Society Pittsburgh, Pa.	50.00
-	- Boy Scouts of America, Western Penna. Div. Pittsburgh, Pa.	100.00
-	- East Liberty Presbyterian Church Penn & Highland Aves., Pittsburgh, Pa.	50.00
Mar. 2	- Shiloh Baptist Church, Butler, Pa.	50.00
Mar. 3	- Pittsburgh Community Service, Pittsburgh, Pa.	50.00
Mar. 10	- Tuberculosis League of Pgh., Pittsburgh, Pa.	284.50
Apr. 17	- Fruit & Flower Mission, Pittsburgh, Pa.	10.00
-	- Associated Charities, Pittsburgh, Pa.	250.00
-	- Playground & Recreation Association, New York, N. Y.	100.00
Apr. 28	- Pittsburgh Orchestra Association, Pittsburgh, Pa.	30.00
May 3	- Girl Scouts, Pittsburgh, Pa.	100.00
May 4	- Western Theological Seminary, H. S. Pittsburgh, Pa.	500.00
May 10	- Boy Scouts of America, Pittsburgh, Pa.	250.00
May 18	- Children's Hospital of Pgh., Forbes St. & McDevitt Place, Pittsburgh, Pa.	100.00
June 4	- National Tuberculosis Association, New York, N. Y.	5.00

K<sup>10</sup>



# Income Statement

1. Income from operations 1,370.00

2. Net income from operations 1,370.00

3. Other income 4,810.00

4. Total income 6,180.00

5. Deductions 1,807.07

6. Net income 4,372.93

7. Dividends on stock 3,300.00

8. Dividends on bonds 3,300.00

9. Other income 1,807.07

10. Total income 8,787.07

11. Interest paid 3,300.00

12. Taxes paid 3,300.00

13. Losses by fire, storm, etc. 1,807.07

14. Bad debts 1,807.07

15. Contributions (186) 1,807.07

16. Other deductions 1,807.07

17. Total income 4,372.93

18. Net income, subject to ordinary taxes 4,372.93

19. Add: Capital net gain 1,807.07

20. Total income 6,180.00

21. Deductions 1,807.07

22. Net income 4,372.93

23. Dividends on stock 3,300.00

24. Dividends on bonds 3,300.00

25. Other income 1,807.07

26. Total income 8,787.07

27. Interest paid 3,300.00

28. Taxes paid 3,300.00

29. Losses by fire, storm, etc. 1,807.07

30. Bad debts 1,807.07

31. Contributions (186) 1,807.07

32. Other deductions 1,807.07

33. Total income 4,372.93

34. Net income, subject to ordinary taxes 4,372.93

35. Add: Capital net gain 1,807.07

36. Total income 6,180.00

37. Deductions 1,807.07

38. Net income 4,372.93

39. Dividends on stock 3,300.00

40. Dividends on bonds 3,300.00

41. Other income 1,807.07

42. Total income 8,787.07

43. Interest paid 3,300.00

44. Taxes paid 3,300.00

45. Losses by fire, storm, etc. 1,807.07

46. Bad debts 1,807.07

47. Contributions (186) 1,807.07

48. Other deductions 1,807.07

49. Total income 4,372.93

50. Net income, subject to ordinary taxes 4,372.93

51. Add: Capital net gain 1,807.07

52. Total income 6,180.00

52

Item 1 - Income from Partnerships & Fiduciaries  
 Reported on return \$7,570.00  
 Corrected \$7,570.00

Item 2 - Income from Partnerships & Fiduciaries  
 Reported on return None  
 Corrected None

Item 3 - Interest on Tax - free Government Bonds  
 Reported on return \$7,570.00  
 The following items were included as tax-free bond interest and  
 in accordance with available records they are not tax-free:  
 Interboro Rapid Transit 4,250.00  
 Country Club (Allegheny County) 200.00  
 University Club, Pittsburgh, Pa. 300.00  
 Hill School 60.00  
 Difference \$4,810.00  
 Corrected \$7,090.50

Item 4 - Other Interest  
 Reported on return \$152,643.72  
 This change is accounted for by the transfer of \$4810.00  
 from tax-free bond interest to other bond interest as  
 above shown.

Schedule 7-4

Item 4 - Income from Partnerships & Fiduciaries  
 a Reported on return A. Overholt & Co. \$(11,682.09) Corrected (\$14,400.50)  
 b " " West Overton Distil. Co. (9938.13) " " (9938.13)  
 c " " J.R.-A.W.&R.B. Mellon Trustees 38941.04 " 38941.04  
 a Loss from A. Overholt & Co. is increased \$2718.41 in accordance with report  
 of Revenue Agent on said Partnership under date of February 18, 1926.  
 b Loss from West Overton Distilling Co. No change is made as per Revenue  
 Agent's Report under date of February 18, 1926.  
 c Income from J. R. - A. W. & R. B. Mellon, Trustees.

No. Change.

522



In Re: Richard B. Mellon

-20-

Schedule 7-5

Year 1923 Form 1040

Item 5 - Rents & Royalties

Reported on return \$49,379.44

Corrected \$49,772.44

See Schedule of Rents.

The rates of depreciation as used in schedule are the same rates as were used in previous reports and were accented. The items of Other Expense in schedule consist of Interest - Taxes and Commissions.

It will be noted in Schedule of Rents that items 1 to 44 inclusive, are in connection with properties owned jointly by Andrew W. & Richard B. Mellon.

Item 45 - Sundry - W. L. Mellon No. 2  
Properties owned jointly by W. L. - A. W. & R. B. Mellon  
(1/3 each)

Schedule 7-5

Item 5 - Profit from Sales

Kind	Acquired - Cost	Sale Price	Profit or Loss
Baldwin Locomotive	1922 59,300.00	70,280.00	10,980.00
"	1922 54,730.00	56,729.00	1,999.00
"	1923 244,580.00	249,035.00	4,455.00
American	1922 122,457.50	136,660.00	14,202.50
"	1923 136,790.00	153,998.00	17,208.00
"	1922 4,950.00	5,381.25	431.25
P. B. E. (edg Bonds)	1923 51,480.00	50,322.00	(1,151.00)
American Locomotive	1923 11,820.00	13,362.00	1,532.00
Pittsburgh Coal Co.			
Totals	686,117.50	735,774.25	49,656.75

Sale of Assets held for more than two years.

Joint Account	Acquired - Cost	Value	Price	Profit or Loss
Real Estate	1920 25,563.90	0	27,700.00	2,136.10
Bonds Union Steel	1903 1266,000.00	1326,175.00	1367,280.00	41,145.00
American Fruit Growers	1919 100,000.00	0	48,790.00	(51,210.00)
Koppers Company Stock	1915 887,395.20	0	1103,193.60	215,798.40
Total - A. W. & R. B. Mellon 1/2 each				207,869.50
R. B. Mellon - 1/2 -				103,934.75
Adheson Stock	1903 56,260.00	108,555.00	200,000.00	91,445.00
Carbideum Stock (1000 shares)	1902 70,533.33	272,380.00	225,000.00	0
E. P. E. & S. Stock	1921 7,762.50	0	10,800.00	3,037.50
E. P. E. & S. Club	1903 100.00	100.00	190.00	90.00

Total Capital Net Gain taxable 8 12 1/2

" " " reported on return

Increase in Capital Net Gain

193,507.25  
151,127.25  
47,380.00

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**Model 7-1**

## 6. Toleranztest, Qualitäts-Profils



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**Overassignment**

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In Re: Richard B. Mellon

Schedule No. 9List of Dividends - 1923

Leguier Valley B. B.	300.00
P. & L. B. B. B.	2,530.00
Bessemer Trust Co.	3,510.00
Bradock National Bank	12,012.00
Bank of Charlevoix	8,000.00
Duquesne Trust Co.	900.00
East Pgh. Svcs. & Trust Co.	1,530.00
Farmers & Merchants W. B. West Newton	175.00
" Nat'l Bank - Freeport	60.00
Fidelity, Title & Trust Co.	40,000.00
First National Bank, Donora	120.00
" " " Ford City	1,187.50
" " " Port Arthur	480.00
" " " Scottdale	2,750.00
Fourth St. National Bank	1,600.00
Logan Trust Co. New Kensington	3,960.00
Mellon National Bank	114.00
Monongahela Trust Co.	1,200.00
National Bank of Com. N. Y.	18,000.00
Peoples Nat'l Bank, Ellwood City	2,200.00
Scottdale Svcs. & Trust	600.00
Second Nat'l Bank, Uniontown	400.00
Title & Trust Company, West Virginia	1,935.00
Union Svcs. Bank	60.00
Union Trust Co. East St. Louis	600.00
" " " Pgh. Pa.	627,800.00
" " " Donora	720.00
Wilkesburg Bank	1,452.00
Workingsman's Svcs. & Trust Co.	1,500.00
American Surety Co.	225.00
Aluminum Company of America	377,848.50
Carborundum Co.	68,631.00
Consolidated Ice Co.	11.25
Gulf Oil Co.	7.52
Acheson Graphite	1,875.00
McClintock-Marshall Cons. (Com.)	63,210.00
" " (Pfd.)	16,429.00
Standard Steel Car Co.	24,600.00
Union Fidelity Title Ins. Co.	60.00
" Springs Mfg. Co.	9,600.00
West Bradock Bridge Co.	132.00
Mon. Light & Power	250.00
" Street Ry.	175.50
Kensington Water Co.	3,000.00
Westinghouse Air Brakes	365.40
Pgh. Coal Co.	800.00

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*Bill of Exceptions—Defendant's Exhibit "RR".*

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The omitted portions of said Defendant's Exhibit "QQ", together with the parts set forth above, are also incorporated herein by reference and made part thereof, the original said exhibits in certified photostatic form having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof pursuant to stipulation between counsel and order of this court that said exhibits be sent up in their original certified photostatic form with, and as part of, the transcript of record, as appears elsewhere herein.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "RR", being a certified photostatic copy of a letter dated March 5, 1926, to Mr. Richard B. Mellon from the Commissioner, relating to his income tax for 1921.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "RR".**

March 5, 1926.

Mr. Richard B. Mellon,  
514 Smithfield Street,  
Pittsburgh, Pa.

Sir:

An audit of your income tax return for 1921, in connection with the Revenue Agent's report dated November 17, 1925, discloses an overassessment of tax in the amount of \$1,833.65, details of which are as follows:

*Bill of Exceptions—Defendant's Exhibit "RR".*

The report of the examining officer has been accepted with the following exceptions:

In accordance with the evidence presented in your protest, the loss on the sale of the stock of the Penn Mining Company has been increased from \$983.51, as shown by the agent, to \$3,522.26.

The deduction for contributions has been decreased from \$75,128.57, as shown by the agent, to \$74,747.76, representing 15% of your corrected net income without the benefit of this deduction.

A recomputation of your tax follows:

Net income subject to surtax, as shown by the agent (no income subject to normal tax) .....	\$425,728.59
Less: Increase in stock loss ....	\$2538.75
Decrease in contributions      380.81	2,157.94
Corrected net income subject to surtax ...	\$423,570.65
Surtax on \$423,570.65 .....	\$215,359.51
Less 2% tax paid at source .....	1,826.87
Balance .....	\$213,532.64
Tax previously assessed .....	215,366.29
Overassessment .....	\$ 1,833.65

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the Collector of Internal Revenue for your district. If the tax in ques-



*Bill of Exceptions—Defendant's Exhibit "SS".*

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tion has not been paid, the amount will be abated by the Collector. If the tax has been paid, the amount of overpayment will first be credited against unpaid income tax for another year or years, and the balance, if any, will be refunded to you by check of the Treasury Department. It will thus be seen that the overassessment does not indicate the amount which will be credited or refunded since a portion may be an unpaid assessment which has been entered but not paid.

Respectfully,

*Assistant to the Commissioner.*

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*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "SS", being a certified photostatic copy of a letter dated February 16, 1928, to Mr. Richard B. Mellon from the Deputy Commissioner, relating to the income tax for the year 1923.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "SS".**

February 16, 1928.

Mr. Richard B. Mellon,  
514 Smithfield Street,  
Pittsburgh, Pennsylvania.

Sir:

A review of the report submitted by the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania,

*Bill of Exceptions—Defendant's Exhibit "SS".*

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covering your tax liability for the year 1923, discloses a deficiency of \$3,357.56.

If you acquiesce in the proposed adjustments, as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:FAR:PL. In the event that you acquiesce in a part of such proposed adjustments, the form should be executed with respect to the items to which you agree.

If, however, you do not acquiesce in all of the proposed changes, you are granted a period of 10 days from the date of this letter to file a protest and request a hearing at Washington if desired.

The protest must cover all items which the taxpayer questions and may be accompanied by a statement of additional facts or by a brief or both. It must be executed in triplicate, under oath, and contain the following information:

(a) The name and address of the taxpayer; (b) the designation by date and symbol of the letter advising of the tentative deficiency with respect to which the protest is made; (c) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (d) an itemized schedule of the findings to which the taxpayer takes exception; (e) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (f) in case the taxpayer desires a hearing, statement to that effect.



Bill of Exceptions—Defendant's Exhibit "SS".

If no reply is received within the period mentioned above, it will be assumed that no hearing is desired and the Bureau will proceed to close the case in the usual manner.

If, after said hearing and consideration by this office of evidence or briefs of argument submitted, the Commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail, in accordance with the provisions of Section 274 of the Revenue Act of 1926. Should you not agree to the deficiency as finally determined by the Commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

Enclosures:

Statement  
Form A.

Deputy Commissioner.

Feb. 16, 1928.

In re: Mr. Richard B. Mellon,  
514 Smithfield St.,  
Pittsburgh, Pennsylvania.

Deficiency  
1923            \$3,357.56

Reference is made to the report of the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania,

Bill of Exceptions—Defendant's Exhibit "SS".

transmitted to this office under date of March 26, 1926, which has been reviewed and approved with the following exceptions:

The deduction of \$52,052.50 claimed under the item "Rents and Royalties" A. W. and R. B. Mellon properties for taxes paid on the J. M. Guffey Company coal lands, has been disallowed. As these taxes were paid for account of the corporation's properties, the amount is considered an advance to the corporation and does not constitute an allowable deduction.

Engineers' fees and commissions in connection with the survey of the Guffey Company coal properties are held to be in the nature of capital expenditures and therefore not deductible from current income. The amount of \$24,923.07 as claimed for account of the A. W. and R. B. Mellon properties for such expenses has been disallowed.

In accordance with the analysis of the Gulf Oil Corporation Stock, "Account No. 3", H. A. Phillips, Agent, furnished by your representative, there has been included in your income for 1923 your proportionate share of the dividends received in the amount of \$16,068.75; and the loss of \$30,182.50 as the result of sales under this account has been allowed as a deduction.

Net income reported on return .....

\$ 720,619.09

Add:

1. Deduction for J. M. Guffey Coal Company taxes disallowed ( $\frac{1}{2}$  of \$52,052.00) .....\$ 26,026.25



Bill of Exceptions—Defendant's Exhibit "SS".

2. Engineering fees disallowed ( $\frac{1}{2}$ of \$24,923.07).	12,461.53	
3. Dividends received ( $\frac{1}{3}$ of \$16,068,753) .....	5,356.25	
4. Miscellaneous taxes ..	337.81	44,181.84
		<hr/>
		\$764,800.93

## Deduct:

5. Additional distributive loss A. Overholt and Company .....	2,718.41	
6. Increase in losses on stock sales ( $\frac{1}{3}$ of \$30,182.50) .....	10,060.83	
7. Contributions increased.	34,486.48	47,265.72
		<hr/>
Ordinary income as adjusted	\$ 717,535.21	
Capital net gain reported .	\$ 151,127.25	
Capital loss disallowed ...	47,380.00	
Capital net gain as adjusted .....	\$ 198,507.25	
Ordinary income adjusted .	717,535.21	
		<hr/>
Net income adjusted .....	\$ 916,042.46	

## COMPUTATION OF TAX

Net income adjusted .....	\$ 717,535.21
Dividends .....	3,366,249.26
	<hr/>
Income subject to normal tax	None

*Bill of Exceptions—Defendant's Exhibit "SS".*

Surtax on \$717,535.21 .....	\$ 329,727.60
12½% on \$198,507.25 .....	24,813.41
	<hr/>
	\$354,541.01
Less: Tax paid at source .....	1,418.01
	<hr/>
	\$353,123.00
Less: 25% reduction, Section 1200, Revenue Act 1924 ...	88,280.75
	<hr/>
	\$264,842.25
Tax previously assessed ...	\$348,646.25
Less: 25% reduction .....	87,161.56
	<hr/>
Deficiency .....	\$ 3,357.56

## EXPLANATION OF CHANGES

1 and 2. Your one-half share of the taxes and engineering fees in connection with the Guffey Coal Company lands has been disallowed for the reasons stated above.

3. Dividends have been increased by your one-third share in the Gulf Oil Corporation account designated No. 3.

4. The deduction for taxes has been reduced by items entered twice.

5. Distributive loss sustained through the partnership of A. Overholt and Company has been increased in accordance with the recommendation of the examining officer.



*Bill of Exceptions—Defendant's Exhibit "SS".*

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6. Losses on sales of stock have been increased by your one-third share in the results of sales in the Gulf Oil Corporation Account No. 3.

7. The amount of \$127,168.07 deducted for contributions has been increased to the 15% limitation by considering capital net gain and increased ordinary income.

The 25% credit allowable under Section 1200 of the Revenue Act of 1924 has been computed in accordance with the decision in the appeal of the Estate of Philip M. Reynolds, United States Board of Tax Appeals, Volume 8, Page 360.

If the above adjustments are satisfactory, it is suggested that you execute and return to this office the enclosed agreement waiving the right to appeal and consenting to immediate assessment in order that your case may be closed without delay.

Payment of the tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

*Mr. Eustace:*

Defendant offers in evidence Defendant's Exhibit "TT", being copy of a letter dated March 5, 1926, from the Commissioner of Internal Revenue to Hon. A. W. Mellon; and this being from the files of the Bureau of Internal Revenue, we ask leave to withdraw the exhibit and substitute later a photostatic copy.

*Bill of Exceptions—Defendant's Offers.*

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*Mr. Booth:*

I object to the introduction of Defendant's Exhibit "TT". It is an unsigned carbon copy of a letter to Mr. Mellon, with a schedule on it.

*The Court:*

Has there been any demand upon the plaintiff to produce the original?

*Mr. Booth:*

No, sir.

*Mr. Eustace:*

We now make demand upon the plaintiff to produce in evidence original letter from the Commissioner of Internal Revenue to A. W. Mellon, dated March 5, 1926, original letter dated March 16, 1928, original letter dated February 16, 1928; original letter from the Commissioner of Internal Revenue to R. B. Mellon dated March 5, 1926, letter dated February 16, 1928, letter dated February 24, 1927.

*Mr. Booth:*

I submit it is too late now to make demand upon us, in the middle of the trial.

*The Court:*

It is an untimely demand, of course. As I look at these various offers, I confess I am quite at a loss to see their relevancy in this case. I am admitting them with reserved rulings, however, until I can examine them in connection with the whole thing. As to that exhibit, before it could be introduced, you really ought to have a demand for the production of the original



*Bill of Exceptions—E. L. Updike—Direct.*

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or at least somebody who will testify that it was from the files and is a copy of the letter which was actually sent.

**Testimony of E. L. Updike.**

Whereupon, E. L. Updike was called as a witness on behalf of defendant and, having been first duly sworn, was examined and testified in substance as follows:

My name is E. L. Updike. I reside in Washington, D. C., and I have held various positions with the Bureau of Internal Revenue, starting September 16, 1920, as assistant auditor up to and including assistant chief accountant and auditor; then the position of senior attorney. I now hold the position of Senior Attorney in the Office of the Assistant Chief Counsel for the Bureau of Internal Revenue.

Q. You may state whether or not you have had the custody of the files of the Bureau of Internal Revenue relating to the income tax returns of A. W. Mellon and R. B. Mellon, named as plaintiffs in the pending suits, for the years 1920, 1921, 1922, 1923, 1924 and 1925?

A. The same were submitted to me by the Administrative Section and by the Civil Division of the General Counsel's Office for use in connection with these two proceedings, also for use in connection with another proceeding involving A. W. Mellon pending before the United States Board of Tax Appeals.

Q. Handing you what has been marked for identification as Defendant's Exhibit "TT", I ask you to

state whether or not that instrument was contained in any of the files which you have described?

A. Yes, sir, when the same were furnished to me.

*Mr. Eustace:*

Defendant now offers in evidence Defendant's Exhibit "TT".

*Mr. Booth:*

We ask leave to examine the witness.

*The Court:*

Go ahead.

*Mr. Booth:*

Q. Mr. Updike, you are not in the Custodian Department, you don't have charge of the files?

A. Only the files of the cases assigned to the attorney, and on which the attorney whom I work with and I are working at the time; we keep the files there in our office, all papers relating to a particular case.

Q. After the file has been assigned to you?

A. After the case has been assigned, or we have been assigned to work on a case.

Q. The file comes from the Custodian Department?

A. We send through what we call a requisition for all of the papers relating to that particular taxpayer.

Q. You didn't have custody of these files from 1926 down to date?

A. No, sir.

Q. You didn't write that letter (Exhibit "TT")?

*Bill of Exceptions—Motion.*

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A. No, sir.

Q. You don't know who wrote it?

A. Let me take a look at it again; I may be able to tell from the initials on it. (Letter handed to witness.) The second initial appears—although I can't say for sure—to be the initial of Mr. Laird, of Section "B" of the Income Tax Unit.

Q. Do you know whether that letter was ever mailed out?

A. No, not of my own knowledge.

Q. Do you know whether the facts set forth in that letter are true and correct?

A. Not of my own knowledge.

*Mr. Booth:*

I think the letter is not admissible, sir, and I renew the objection.

*The Court:*

That objection, I think, will have to be sustained.

*Mr. Eustace:*

At this time the defendant moves for a continuance of the trial of this case until such time as the defendant may procure certified photostatic copies of necessary evidence to be used in the trial of this case. I will state to the Court in this connection that we have been working night and day since this case has been placed in the hands of the Department of Justice for the purpose of trial, and that we have procured and produced here certified photostatic copies of all exhibits which it has been physically possible to obtain



in the time at our disposal; and that we have additional exhibits here which are from the files of the Bureau of Internal Revenue, and which are necessary to the defense of these suits, and which we have not had the opportunity by reason of the lack of time to have photostated and certified as being from the records and files of the Bureau of Internal Revenue, and which we believe to be material to a determination of the issues in these cases.

*The Court:*

I am afraid that motion is a little indefinite. It should be supported, I think, by affidavit in the first place; and you have had notice, very considerable notice of the time, because the case was put off once.

*Mr. Eustace:*

Well, that notice might have been sufficient in some cases, but these cases involve a large amount of money, they involve production of a great mass of testimony—

*The Court:*

Yes, but the Court ought to be just as careful in all cases, whether the amount is large or not; the size of that which is involved ought not to make any difference in so far as the duties of counsel are concerned.

*Mr. Eustace:*

It makes a difference in the time necessary for preparation.

*Bill of Exceptions—Defendant's Offers.*

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*The Court:*

If you had not had sufficient time, I would say all right; but there has been a great length of time. This case has been pending for several years.—Well, let us save trouble. As I say, I doubt the relevancy of it, but I will admit the exhibit for the present, reserving ruling as to the materiality and relevancy.

*Mr. Eustace:*

Then under that ruling may it be considered that Defendant's Exhibit "UU", being a letter dated February 10, 1928, from the Commissioner of Internal Revenue to Mr. A. W. Mellon, also from the files of the Bureau of Internal Revenue; and Defendant's Exhibit "VV", being a letter from the Commissioner of Internal Revenue, dated February 16, 1928, to A. W. Mellon, and additional exhibits yet to be marked, may be admitted under the same ruling, it being understood that Mr. Updike would testify with reference to each of these exhibits being now offered as he has testified with reference to Exhibit "TT".

*The Court:*

We will admit that under reserved ruling, and note an exception.

Which said Defendant's Exhibits "TT", "UU", and "VV", so offered and admitted in evidence are in words and figures as follows:

**Defendant's Exhibit "TT".**

March 5, 1926.

Hon. A. W. Mellon,  
Woodland Road,  
Pittsburgh, Pa.

Sir:

An audit of your income tax return for 1921, in connection with the Revenue Agent's Report dated November 17, 1925, discloses a deficiency in tax of \$132,836.21, details of which are shown in the attached statement.

Inasmuch as you have agreed to the amount of the deficiency, the tax will be assessed on the next list.

Payment should not be made, however, until a notice is received from the Collector of Internal Revenue for your district.

Respectfully,

---

*Commissioner.***STATEMENT**

1921 additional tax .....\$132,836.21.

The report of the examining officer has been approved with the following exception:

In accordance with the evidence presented in your protest the loss on the sale of the stock of the Penn



Bill of Exceptions—Defendant's Exhibit "UU".

Mining Company has been increased from \$938.51, as shown by the agent, to \$3,522.26.

A recomputation of your tax follows:

Net income subject to surtax, as shown

by agent's report .....	\$2,404,642.85
Less: Increase in stock loss .....	2,538.75

Corrected net income subject to surtax

(no income subject to normal tax) ..	\$2,402,104.10
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Surtax on \$2,402,104.10 .....	\$1,494,812.67
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Less 2% tax paid at source .....	1,928.75
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Balance .....	\$1,492,883.92
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Tax previously assessed .....	1,360,047.71
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Further tax due .....	\$ 132,836.21
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**Defendant's Exhibit "UU".**

Feb. 16, 1928.

Mr. A. W. Mellon,  
Woodland Road,  
Pittsburgh, Pennsylvania.

Sir:

Reference is made to the report of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania, covering the years 1922 and 1923, dated March 3, 1926, wherein an overassessment of \$913.39 was recommended for the year 1922.

Bill of Exceptions—Defendant's Exhibit "UU".

In review of the report for the year 1923 and consideration of the account of J. M. Guffey on your books, the results of which you are being advised in a separate communication, it has been ascertained that a deduction was claimed in that year for taxes paid on the J. M. Guffey Coal Company properties. The deduction is being disallowed for the reasons that such payments were made for account of the pertinent corporation and are considered to be an advance to such corporation.

It appears that a similar deduction was claimed in your return for 1922 in the amount of \$42,967.57 against the revenue received from properties owned jointly by A. W. and R. B. Mellon.

Adjustment has therefore been made in the agent's recommendation, which discloses the deficiency as noted below:

Ordinary income reported on return ... \$1,939,688.58  
Add:

1. Additional partnership income .....	\$2,935.07	
2. Deduction for tax paid on Guffey Coal lands disallowed ( $\frac{1}{2}$ of \$42,967.57) .....	21,483.78	24,418.85
		<hr/>
		\$1,964,107.43

Bill of Exceptions—Defendant's Exhibit "UU".

## Deduct:

3. Luxury taxes paid .....	5,551.18
Ordinary income as adjusted .....	\$1,958,556.25
Capital net gain reported on return ..	99,866.19
Net income as adjusted .....	\$2,058,422.44

## COMPUTATION OF TAX

Ordinary income adjusted .....	\$1,958,556.25
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## Less:

Dividends .....	\$2,604,683.97
Taxable interest on	
Liberty Bonds .....	1.46
Exemption .....	2,400.00
	2,607,085.43

Income subject to normal tax .....	None
Surtax on \$1,958,556.25 .....	\$ 950,238.12
12½% on 99,866.19 .....	12,483.27
	\$ 962,721.39

Less: Tax withheld at source .....	1,934.62
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Tax assessable .....	\$ 960,786.77
Tax previously assessed .....	950,958.28

Deficiency .....	\$ 9,828.49
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Inasmuch as there is disclosed a deficiency in tax for the year 1922 as stated above, your claim for the refund of \$913.39 will be rejected and the rejection will officially appear on a schedule to be approved by the Commissioner.



*Bill of Exceptions—Defendant's Exhibit "VV".*

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The four-year period provided by Section 277 (a) (2) of the Revenue Act of 1926 within which assessment of the deficiency may be made has expired. If, however, you agree to the aggregate deficiency as determined, you may make voluntary payment to the Collector of Internal Revenue for your district. If you do not agree to the adjustments as shown in the report, but are willing to make voluntary payment of the tax as finally determined, you may present protest to such adjustments, and if you so desire, an opportunity for a hearing before the Unit will be afforded you. In order that your case may be closed promptly, it is requested that any such protest and request for hearing be presented within ten days from the date of this letter.

Respectfully,

*Deputy Commissioner.*

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**Defendant's Exhibit "VV".**

Feb. 16, 1928.

Mr. A. W. Mellon,  
Woodland Road,  
Pittsburgh, Pa.

Sir:

A review of the report submitted by the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania, covering your tax liability for the year 1923, discloses a deficiency of \$14,573.77.

Bill of Exceptions—Defendant's Exhibit "VV".

If you acquiesce in the proposed adjustments, as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:FAR:PL. In the event that you acquiesce in a part of such proposed adjustments, the form should be executed with respect to the items to which you agree.

If, however, you do not acquiesce in all of the proposed changes, you are granted a period of 10 days from the date of this letter to file a protest and request a hearing at Washington if desired.

The protest must cover all items which the taxpayer questions and may be accompanied by a statement of additional facts or by a brief or both. It must be executed in triplicate, under oath, and contain the following information:

(a) The name and address of the taxpayer; (b) the designation by date and symbol of the letter advising of the tentative deficiency with respect to which the protest is made; (c) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (d) an itemized schedule of the findings to which the taxpayer takes exception; (e) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (f) in case the taxpayer desires a hearing, statement to that effect.

If no reply is received within the period mentioned above, it will be assumed that no hearing is

Bill of Exceptions—Defendant's Exhibit "VV".

desired and the Bureau will proceed to close the case in the usual manner.

If, after said hearing and consideration by this office of evidence or briefs of argument submitted, the Commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail, in accordance with the provisions of Section 274 of the Revenue Act of 1926. Should you not agree to the deficiency as finally determined by the Commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

*Deputy Commissioner.*

Enclosures:

Statement  
Form A.

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STATEMENT

Feb 16 1928

	<i>Deficiency</i>
1923 .....	\$14,573.77

Reference is made to the report of the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania, transmitted to this office under date of March 26, 1926, which has been reviewed and approved with the following exceptions:



Bill of Exceptions—Defendant's Exhibit "VV".

The deduction of \$52,052.50 claimed under the item "Rents and Royalties" A. W. and R. B. Mellon properties for taxes paid on the J. M. Guffey Company coal lands has been disallowed. As these taxes were paid for account of the corporation's properties, the amount is considered an advance to the corporation and does not constitute an allowable deduction.

Engineers' fees and commissions in connection with the survey of the Guffey Company coal properties are held to be in the nature of capital expenditures and therefore not deductible from current income. The amount of \$24,923.07 as claimed for account of the A. W. and R. B. Mellon properties for such expenses has been disallowed.

In accordance with the analysis of the Gulf Oil Corporation Stock, "Account No. 3", H. A. Phillips, Agent, furnished by your representative, there has been included in your income for 1923 your proportionate share of the dividends received in the amount of \$16,068.75; and in the loss of \$30,182.50 as the result of sales under this account, has been allowed as a deduction to the extent of one-third.

Net income reported on return ..... \$2,368,319.68  
Add:

1. Deduction for J. M.  
Guffey Coal Company,  
taxes disallowed ( $\frac{1}{2}$  of  
\$52,052.50) ..... \$26,026.25

*Bill of Exceptions—Defendant's Exhibit "VV".*

2. Engineering fees disallowed ( $\frac{1}{2}$ of \$24,923.07) .....	12,461.53	
3. Dividends received ( $\frac{1}{3}$ of \$16,068.75) .....	5,356.25	43,844.03
		<hr/>
		\$2,412,163.71

## Deduct:

4. Additional distributive loss		
A. Overholt and Company .....	\$ 2,718.39	
5. Additional taxes paid	3,241.65	
6. Increase in losses on sales of stock ( $\frac{1}{3}$ of \$30,182.50) .....	10,060.83	16,020.87
		<hr/>

Ordinary income as adjusted .....	\$2,396,142.84
Capital Net Gain reported .....	\$ 159,594.64
Capital loss disallowed .....	47,380.00
	<hr/>

Capital net gain as adjusted ..... \$ 206,974.64

Ordinary income adjusted ..... \$2,396,142.84

Capital net gain ..... 206,974.64

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\$2,603,117.48

*Bill of Exceptions—Defendant's Exhibit "VV".*

Computation of tax.

Net income adjusted	\$2,396,142.84
Dividends .....	\$4,802,208.73
Exemption .....	2,400.00
	4,804,608.73

Income subject to normal tax .....	None
Surtax on \$2,396,142.84 .....	\$1,169,031.42
12½% on \$206,974.64 .....	25,871.83

1,194,903.25

Less tax withheld at source .....	1,483.72
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1,193,419.53

Less 25% reduction, Section 1200, Revenue Act 1924 .....	298,354.88
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Tax assessable .....	\$ 895,064.65
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Tax previously as- sessed .....	\$1,173,987.85
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Less 25% reduction	293,496.97	880,490.88
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Deficiency in tax .....	\$ 14,573.77
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Explanation of Changes.

1 and 2. Your one-half share of the taxes and engineering fees paid in connection with the Guffey Coal Company lands has been disallowed for the reasons stated above.

3. Dividends have been increased by your one-third share in the Gulf Oil Corporation account designated as No. 3.



Bill of Exceptions—Defendant's Exhibit "VV".

4. Distributive loss sustained through the partnership of A. Overholt and Company has been increased as a result of an examination of the partnership's records.

5. Customs tax paid.

6. Losses on sales of stocks has been increased by your one-third share in the results of sales in the Gulf Oil Corporation Account No. 3.

The 25% credit allowable under Section 1200 of the Revenue Act of 1924 has been computed in accordance with the decision in the appeal of the Estate of Philip M. Reynolds, United States Board of Tax Appeals, Volume 8, Page 360.

If the above adjustments are satisfactory, it is suggested that you execute and return to this office the enclosed agreement waiving the right to appeal and consenting to immediate assessment in order that your case may be closed without delay.

Payment of the tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

*Mr. Eustace:*

Defendant offers in evidence copy of Bureau letter, marked for identification as Defendant's Exhibit "WW", dated February 16, 1928, addressed to Richard B. Mellon, covering income tax liability for the year 1923.

*Bill of Exceptions—Defendant's Exhibit "WW".*

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*Mr. Frazer:*

We object to Defendant's Exhibit "WW", for the reason given yesterday afternoon in the objections to the exhibit last offered, it being merely a carbon copy of a letter unidentified by any person as having been sent, and not the best evidence; for the further reason it contains self-serving declarations, hearsay evidence; and as incompetent, irrelevant and immaterial.

*The Court:*

I will admit it temporarily, subject to later ruling.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "WW".**

Feb. 16, 1928.

Mr. Richard B. Mellon,  
514 Smithfield Street,  
Pittsburgh, Pennsylvania.

Sir:

A review of the report submitted by the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania, covering your tax liability for the year 1923, discloses a deficiency of \$3,357.56.

If you acquiesce in the proposed adjustments, as shown in this letter and the accompanying statement, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:FAR:PL.

*Bill of Exceptions—Defendant's Exhibit "WW".*

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In the event that you acquiesce in a part of such proposed adjustments, the form should be executed with respect to the items to which you agree.

If, however, you do not acquiesce in all of the proposed changes, you are granted a period of 10 days from the date of this letter to file a protest and request a hearing at Washington if desired.

The protest must cover all items which the taxpayer questions and may be accompanied by a statement of additional facts or by a brief or both. It must be executed in triplicate, under oath, and contain the following information:

(a) The name and address of the taxpayer; (b) the designation by date and symbol of the letter advising of the tentative deficiency with respect to which the protest is made; (c) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (d) an itemized schedule of the findings to which the taxpayer takes exception; (e) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (f) in case the taxpayer desires a hearing, statement to that effect.

If no reply is received within the period mentioned above, it will be assumed that no hearing is desired and the Bureau will proceed to close the case in the usual manner.

If, after said hearing and consideration by this office of evidence or briefs of argument submitted, the



Bill of Exceptions—Defendant's Exhibit "WW".

Commissioner finally determines that there is a deficiency, you will be advised thereof by registered mail, in accordance with the provisions of Section 274 of the Revenue Act of 1926. Should you not agree to the deficiency as finally determined by the Commissioner, you will be allowed 60 days from the date of mailing of the registered letter (not counting Sunday as the sixtieth day) in which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Respectfully,

*Deputy Commissioner.*

Enclosures:

Statement  
Form A.

Feb. 16, 1928

*In re:* Mr. Richard B. Mellon,  
514 Smithfield St.,  
Pittsburgh, Pennsylvania.

*Deficiency*

1923 .....\$3,357.56

Reference is made to the report of the Internal Revenue Agent in Charge, Pittsburgh, Pennsylvania, transmitted to this office under date of March 26, 1926, which has been reviewed and approved with the following exceptions:

The deduction of \$52,052.50 claimed under the item "Rents and Royalties" A. W. and R. B. Mellon

Bill of Exceptions—Defendant's Exhibit "WW".

properties for taxes paid on the J. M. Guffey Company coal lands, has been disallowed. As these taxes were paid for account of the corporation's properties, the amount is considered an advance to the corporation and does not constitute an allowable deduction.

Engineers' fees and commissions in connection with the survey of the Guffey Company coal properties are held to be in the nature of capital expenditures and therefore not deductible from current income. The amount of \$24,923.07 as claimed for account of the A. W. and R. B. Mellon properties for such expenses has been disallowed.

In accordance with the analysis of the Gulf Oil Corporation Stock, "Account No. 3," H. A. Phillips, Agent, furnished by your representative, there has been included in your income for 1923 your proportionate share of the dividends received in the amount of \$16,068.75; and the loss of \$30,182.50 as the result of sales under this account has been allowed as a deduction.

Net income reported on return	\$ 720,619.09
-------------------------------	---------------

Add:

- |   |              |
|---|--------------|
| 1. Deduction for J. M. Guffey Coal Company taxes disallowed ( $\frac{1}{2}$ of \$52,052.00) ..... | \$ 26,026.25 |
| 2. Engineering fees disallowed ( $\frac{1}{2}$ of \$24,923.07) .....                              | 12,461.53    |
| 3. Dividends received ( $\frac{1}{3}$ of \$16,068.75) .....                                       | 5,356.25     |

Bill of Exceptions—Defendant's Exhibit "WW"

4. Miscellaneous taxes ...	337.81	44,181.84
		<hr/>
		\$ 764,800.93

## Deduct:

5. Additional distributive loss A. Overholt and Company .....	2,718.41	
6. Increase in losses on stock sales ( $\frac{1}{3}$ of \$30,-182.50) .....	10,060.83	
7. Contributions increased	34,486.48	47,265.72
		<hr/>
Ordinary income as adjusted		\$ 717,535.21
Capital net gain reported		\$ 151,127.25
Capital loss disallowed		47,380.00
		<hr/>
Capital net gain as adjusted .....		\$ 198,507.25
Ordinary income adjusted .....		717,535.21
		<hr/>
Net income adjusted ...		\$ 916,042.46

## COMPUTATION OF TAX

Net income adjusted .....	\$ 717,535.21
Dividends .....	3,366,249.26
	<hr/>
Income subject to normal tax	None
Surtax on \$717,535.21 .....	\$ 329,727.60
12 $\frac{1}{2}$ % on \$198,507.25 .....	24,813.41
	<hr/>
	\$ 354,541.01



Bill of Exceptions—Defendant's Exhibit "WW".

Less: Tax paid at source ...	1,418.01	
		\$353,123.00
Less: 25% reduction, Section 1200, Revenue Act 1924	88,280.75	
		\$ 264,842.25
Tax previously assessed ....	\$348,646.25	
Less: 25% reduction .....	87,161.56	261,484.69
Deficiency .....		\$ 3,357.56

## EXPLANATION OF CHANGES

1 and 2. Your one-half share of the taxes and engineering fees in connection with the Guffey Coal Company lands has been disallowed for the reasons stated above.

3. Dividends have been increased by your one-third share in the Gulf Oil Corporation account designated No. 3.

4. The deduction for taxes has been reduced by items entered twice.

5. Distributive loss sustained through the partnership of A. Overholt and Company has been increased in accordance with the recommendation of the examining officer.

6. Losses on sales of stock have been increased by your one-third share in the results of sales in the Gulf Oil Corporation Account No. 3.

Bill of Exceptions—Defendant's Exhibit "WW"

7. The amount of \$127,168.07 deducted for contributions has been increased to the 15% limitation by considering capital net gain and increased ordinary income.

The 25% credit allowable under Section 1200 of the Revenue Act of 1924 has been computed in accordance with the decision in the appeal of the Estate of Philip M. Reynolds, United States Board of Tax Appeals, Volume 8, Page 360.

If the above adjustments are satisfactory, it is suggested that you execute and return to this office the enclosed agreement waiving the right to appeal and consenting to immediate assessment in order that your case may be closed without delay.

Payment of the tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

*Mr. Eustace:*

And for the same purpose, defendant offers in evidence Defendant's Exhibit "XX", being a copy of Bureau letter addressed to Richard B. Mellon, dated March 5, 1926, referring to an audit of the income tax return of R. B. Mellon for 1921.

*Mr. Frazer:*

Same objection to this letter, if the Court please.

*Bill of Exceptions—Defendant's Exhibit "XX".*

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*The Court:*

I am assuming here, as in the other case, that you have some evidence of their having been produced at least from a Government file.

*Mr. Eustace:*

It was understood that the testimony of Mr. Updike would extend to all of these exhibits.

*The Court:*

All right; I will overrule the objection for the time being, and note an exception.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

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**Defendant's Exhibit "XX".**

March 5, 1926.

MR. RICHARD B. MELLON,  
514 Smithfield Street,  
Pittsburgh, Pa.

Sir:

An audit of your income tax return for 1921, in connection with the Revenue Agent's report dated November 17, 1925, discloses an overassessment of tax in the amount of \$1,833.65, details of which are as follows:

The report of the examining officer has been accepted with the following exceptions:

In accordance with the evidence presented in your protest, the loss on the sale of the stock of the Penn



Bill of Exceptions—Defendant's Exhibit "XX".

Mining Company has been increased from \$983.51, as shown by the agent, to \$3,522.26.

The deduction for contributions has been decreased from \$75,128.57, as shown by the agent, to \$74,747.76, representing 15% of your corrected net income without the benefit of this deduction.

A recomputation of your tax follows:

Net income subject to surtax, as shown by the agent (no income subject to normal tax) .....	\$425,728.59
Less: Increase in stock loss .....	\$2,538.75
Decrease in contributions .....	380.81
	2,157.94
Corrected net income subject to surtax .....	\$423,570.65
Surtax on \$423,570.65 .....	\$215,359.51
Less 2% tax paid at source .....	1,826.87
Balance .....	\$213,532.64
Tax previously assessed .....	215,366.29
Overassessment .....	\$ 1,833.65

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the Collector of Internal Revenue for your district. If the tax in question has not been paid, the amount will be abated by the Collector. If the tax has been paid, the amount of overpayment will first be credited against unpaid

*Bill of Exceptions—Defendant's Exhibit "XX".*

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income tax for another year or years and the balance, if any, will be refunded to you by check of the Treasury Department. It will thus be seen that the over-assessment does not indicate the amount which will be credited or refunded since a portion may be an unpaid assessment which has been entered but not paid.

Respectfully,

*Assistant to the Commissioner.*

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*Mr. Eustace:*

And for the same purpose, defendant now offers Defendant's Exhibit "YY", being Bureau letter dated February 24, 1927, addressed to Mr. R. B. Mellon, referring to an audit of his income tax return for the year 1922, in which he was advised that a deficiency in tax was disclosed.

*Mr. Frazer:*

The same objection to Exhibit "YY."

*The Court:*

I will overrule the objection for the present, and note an exception.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

*Bill of Exceptions—Defendant's Exhibit "YY".*

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**Defendant's Exhibit "YY".**

Feb. 24, 1927.

MR. R. B. MELLON,  
514 Smithfield Street,  
Pittsburgh, Pennsylvania.

Sir:

An audit of your income tax return for the year 1922 in connection with revenue agent's report dated March 26, 1926, discloses a deficiency in tax of \$1,342.52.

Inasmuch as your agent, Mr. D. J. Hicks, has executed an agreement in your behalf consenting to the assessment of the above deficiency, it will be entered on the next assessment list.

Payment of the additional tax should not be made, however, until a notice is received from the Collector of Internal Revenue for your district.

Respectfully,

*Assistant to the Commissioner.*

---

**Mr. Eustace:**

And for the same purpose, defendant offers Defendant's Exhibit "ZZ," being Bureau letter dated February 16, 1928, addressed to Mr. R. B. Mellon, referring to report of examination of his income covering the years 1922 and 1923.



*Bill of Exceptions—Defendant's Exhibit "ZZ".*

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*Mr. Frazer:*

The same objection.

*The Court:*

Objection overruled for the present and exception noted.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "ZZ".**

Feb. 16, 1928.

MR. RICHARD B. MELLON,  
514 Smithfield Street,  
Pittsburgh, Pa.

Sir:

Reference is made to the report of the Internal Revenue Agent in Charge at Pittsburgh, Pennsylvania, covering the years 1922 and 1923, dated March 3, 1926.

There was recommended therein a deficiency of \$1,342.52 for the year 1922, which deficiency was assessed on March 5, 1927, in accordance with the signed agreement furnished at that time.

In the review of the report for 1923 and consideration of the account of J. M. Guffey on your books, the results of which you are being advised in a separate communication, it has been ascertained that there was claimed in 1922 as a deduction in the list of properties owned by A. W. and R. B. Mellon taxes on coal lands in the amount of \$42,967.57, which appear to have been

Bill of Exceptions—Defendant's Exhibit "ZZ".

paid on the J. M. Guffey Coal Company coal properties.

A deduction for a similar item is being disallowed in the year 1923 for the reason that such payments were made for the account of the corporation and are considered to be an advance to the corporation.

The result of a like adjustment in the year 1922 discloses a deficiency of \$9,130.60 as shown by the following synopsis and tax computations:

Ordinary income shown in agent's report dated March 26, 1926, and basis of previous audit as per letter dated February 24, 1927 .....	\$ 238,203.99
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Add:

Taxes paid on J. M. Guffey Coal Company land (1/2 of \$42,967.57) .....	21,483.79
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259,687.78

Deduct:

Additional deduction for contributions —15% of additional income disclosed ..	3,222.57
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Ordinary income adjusted .....	256,465.21
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Capital net gain .....	99,866.19
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Net income adjusted .....	356,331.40
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Computation of Tax

Ordinary income adjusted ....	\$ 256,465.21
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Less: Dividends .....	1,292,555.77
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Income subject to normal tax ..	None
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Bill of Exceptions—Defendant's Exhibit "ZZ".

Surtax on \$256,465.21 .....	99,192.60
12½% on \$99,866.19 .....	12,483.28
	<hr/>
	111,675.88
Less: Tax withheld at source ..	1,887.12
	<hr/>
Tax assessable .....	109,788.76
Tax originally assessed .... \$99,315.64	
Deficiency assessed March 5,	
1927 .....	1,342.52
	<hr/>
Deficiency .....	\$ 9,130.60

The four-year period provided by Section 277 (a) (2) of the Revenue Act of 1926 within which assessment of the deficiency may be made has expired.

If, however, you agree to the aggregate deficiency as determined you may make voluntary payment to the Collector of Internal Revenue for your district. If you do not agree to the adjustments as shown in the report, but are willing to make voluntary payment of the tax as finally determined, you may present protest to such adjustments, and if you so desire, an opportunity for a hearing before the Unit will be afforded you. In order that your case may be closed promptly, it is requested that any such protest and request for hearing be presented within ten days from the date of this letter.

Respectfully,

(Signed) C. B. ALLEN,  
Deputy Commissioner.



*Bill of Exceptions—Defendant's Offers.*

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Thereupon counsel for defendant offered in evidence Defendant's Exhibits "AAA", "BBB", "CCC", "DDD" and "EEE", to each of which offers plaintiffs' counsel objected and same were admitted by the Court subject to future ruling. Said Exhibits "AAA", "BBB", "CCC", "DDD" and "EEE" are identical with Defendant's Exhibits "PP", "QQ", "MM", "NN" and "OO", respectively, save and except that Exhibits "PP", "QQ", "MM", "NN" and "OO" were in photostatic form duly certified under the seal and certificate of the Treasury Department pursuant to law; whereas Exhibit "AAA" to "EEE", inclusive, were offered in their original form. Inasmuch as Defendant's Exhibits "AAA", to "EEE", inclusive, already appear herein under identification as Defendant's Exhibits "PP", "QQ", "MM", "NN" and "OO", respectively, the same will not be here repeated.

*Mr. Eustace:*

Defendant now offers, for the same purpose, Defendant's Exhibit "FFF", being copy of Bureau letter in the files of Richard B. Mellon in the Bureau of Internal Revenue relating to his income tax return for the year 1921.

*Mr. Frazer:*

I object to that, for the reasons given in our objection to similar letters offered earlier by defendant.

*The Court:*

Admitted, subject to future ruling; exception noted.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

*Bill of Exceptions—Defendant's Exhibit "FFF".***Defendant's Exhibit "FFF".**

IT:PA:1

WEL

MR. RICHARD B. MELLON,  
514 Smithfield Street,  
Pittsburgh, Pa.

1,833.65

1040

1921

Tax assessed #305876 .....\$215,366.29

Tax liability ..... 213,532.64

Overassessment .....\$ 1,833.65

The report of the Examining Officer dated November 17, 1925 has been accepted with the exceptions outlined in a separate communication.

Thereupon counsel for defendant offered in evidence Defendant's Exhibits "GGG", "HHH", "III", "JJJ" and "KKK", to each of which offer plaintiffs' counsel objected, and same were admitted by the Court subject to future ruling. Said Exhibits "GGG", "HHH", "III", "JJJ" and "KKK" are identical with Defendant's Exhibits "II", "HH", "LL", "JJ" and "KK", respectively, save and except that Exhibits "II", "HH", "LL", "JJ" and "KK" were in photo-static form duly certified under the seal and certificate of the Treasury Department pursuant to law, whereas Exhibits "GGG" to "KKK", inclusive, were offered in their original form. Inasmuch as Defendant's Ex-

*Bill of Exceptions—Defendant's Offers.*

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hibits "GGG" to "KKK", inclusive, already appear herein under identification as Defendant's Exhibits "II", "HH", "LL", "JJ" and "KK", respectively, the same will not be here repeated.

*Mr. Eustace:*

We now ask leave on behalf of the Bureau of Internal Revenue for permission to withdraw the original Exhibits "TT" to "KKK", inclusive, for the purpose of substituting photostatic copies, these being from the original files of the Bureau of Internal Revenue.

*Mr. Frazer:*

No objection to that.

*The Court:*

Very well; that may be done.

*Mr. Eustace:*

Defendant now offers Defendant's Exhibit "LLL", being the title page of a brief entitled "In the Matter of the audit of the federal income tax returns filed by Hon. A. W. Mellon and Mr. R. B. Mellon, of Pittsburgh, Pennsylvania, for the calendar years 1920 and 1925", together with that part of such brief beginning on page 13, under the heading "Liquidating Trustees of A. Overholt & Company and West Overton Distilling Company Were Taxable Entities", and the remainder of the brief.

*Mr. Frazer:*

What is the purpose of this offer.



*Bill of Exceptions—Defendant's Exhibit "LLL".*

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*Mr. Eustace:*

The purpose of that offer is to show the position taken at that time by the plaintiffs in reference to their income tax liabilities for the years 1920 and 1925.

*Mr. Frazer:*

Objected to, as irrelevant, and immaterial to the issues in this case.

*The Court:*

It may be admitted, subject to future ruling, and exception.

Which said exhibit so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "LLL".**

(Pages 572 a-672 h.)

BEFORE THE TREASURY DEPARTMENT  
COMMISSIONER OF INTERNAL REVENUE

WASHINGTON, D. C.

In the Matter

of

the audit of the federal income tax  
returns filed by HON. A. W. MELLON  
and MR. R. B. MELLON, of Pittsburgh,  
Pennsylvania, for the calendar years  
1930 and 1935.

BRIEF

HON. DAVID BURNET,  
Commissioner of Internal Revenue,  
Washington, D. C.

Sir:

At a recent conference in your office it was agreed  
that taxpayers' representatives would be granted a hearing  
before the General Counsel's office in connection with the  
profits of A. Overholt & Company and West Overton Distilling  
Company. The point at issue may be summarized as follows:

The Commissioner of Internal Revenue  
erroneously included as taxable income in  
the year 1930, one-third of the profits of  
the liquidating agents of A. Overholt & Com-  
pany and West Overton Distilling Company,  
dissolved partnerships in liquidation and  
he also erroneously included as taxable in-  
come for the year 1935, in determining the  
liquidating profits of A. Overholt & Company  
and West Overton Distilling Company, the  
profits and losses for the years 1930, 1931,  
1932 and 1933.

LIQUIDATING TRUSTEES OF A. OVERHOLT & COMPANY  
AND WEST OVERTON DISTILLING COMPANY WERE TAXABLE  
ENTITIES

The Revenue Act of 1918 provides:

"Sec. 219 (a) That the tax imposed by section 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including,-  
.."

"(3) Income held for future distribution under the terms of the will or trust;  
.."

"(4) (b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, .."

"Sec. 225. That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for the individual, estate or trust for which he acts (1) if the net income of such individual is \$1,000 or over if single or if married and not living with husband or wife, or \$2,000 or over if married and living with husband or wife, or (2) if the net income of such estate or trust is \$1,000 or over or if any beneficiary of such estate or trust is a nonresident alien, stating specifically the items of the gross income and the deductions and credits allowed by this title. Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one or two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

"Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to individuals."

"Sec. 200. That when used in this title--

"The term 'fiduciary' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;""



The whole intent of the Act is that the tax shall be paid by the fiduciary except where the income has been distributed periodically to the beneficiaries, in which case the beneficiaries shall pay the tax. It contemplates that the fiduciary shall have all deductions to which an individual would be entitled.

Article 342 of Regulations 45, promulgated under the provisions of the Revenue Act of 1918, provides that in the case of a trust the income is taxed to the fiduciary as to any single individual except that from the income of a decedent's estate there may first be deducted any amount of income properly paid or credited to a beneficiary.

Article 1521 defines a fiduciary as follows:

" 'Fiduciary' is a term which applies to all persons that occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators, and a fiduciary for income tax purposes is a person who holds in trust an estate to which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another as in the case of receivers."

Under the laws of the State of Pennsylvania the liquidating trustees of a partnership are fiduciaries within the meaning of that term as used in both the Revenue Act and the Regulations.

The fiduciaries in this case did not distribute any income in the taxable year 1920, and as a matter of fact, no one was entitled to receive any income during that taxable year. Therefore, the income, if taxable at all in the year 1920, is taxable to the fiduciaries and to them only.

The following cases hold that a fiduciary is a taxable entity:

Woolley, et al. v. Malley, 30 Fed. (2) 73, reversing 18 Fed. (2) 668, certiorari denied, 49 S. Ct. 418, U.S. 860. In this case it was held that where income from property which was ultimately to fall into the residuary estate and which

under the will was held in trust for beneficiaries and then distributed to them but which at the close of the taxable period had not been distributed, should be taxed to the executors.

Irene O'D. Ferrer, Petitioner, v. Commissioner, 20

B.T.A. 811. In this case the Board held:

"Where an estate did not distribute income for prior years until 1921, held that income for those years is properly returnable by the estate and not by the beneficiary."

In a trust in which the income is added to the corpus and held for later distribution, the trustee must return the income, which is taxable to the estate and not to the beneficiary.

Merchants Loan & Trust Co. v. Smietanka, 255 U.S. 509,

65 L. ed. 751 (1921). Action in assumpsit to recover back federal income taxes brought by testamentary trustee under a trust providing for payment of net income to widow during life, after her death to be used for the benefit of children until each child should arrive at twenty-five years of age. The Court held that the testamentary trustee was a taxable person under the Revenue Acts of 1916 and 1917, and that accretions in selling value and the gain from sale of the property was taxable to the testamentary trustee.

Jobes v. Crooks, 33 Fed. (2) 1016 (1929) was an action by a trustee to recover back taxes paid. The Court held that where a declaration of trust gave the trustee discretion to distribute income to beneficiaries, and required the trustee to make such distribution on demand of a majority of the beneficiaries, any income not so distributed to be added to the corpus, income added to the corpus was taxable against the estate as income held for future distribution, although individual beneficiaries had included amounts earned by the trust estate in their return.

Busch v. Commissioner, 50 Fed. (2) 800 (1931) held that the fact that the trustee was also a beneficiary did not



prevent the creation of a trust estate within the Income Tax Statute, the trust being an entity separate from the beneficiaries. In that case it was said that a beneficiary, advancing money to himself as trustee for taxes on a trust estate, could not claim an income tax deduction on the theory that he was paying taxes on his interest in the trust.

In the case of the dissolution of a corporation title to the assets is vested in the stockholders but the assets are usually held by trustees for the purpose of collecting the assets, paying the debts of the corporation and the expenses of liquidation. The assets may be used by the trustees in whole or in part for the payment of debts. The stockholders' rights to the assets cannot be measured until the assets have been collected and the indebtedness discharged. The ownership of the assets of a partnership, after the death of a partner, is similar to the ownership by the stockholders of the assets of a dissolved corporation. In both cases the assets while vested in either the partners or the stockholders are held by liquidating trustees for the same purpose, to-wit, collecting the assets, paying the debts and the expenses of liquidation and distributing the balance to either the partners or the stockholders.

In the case of a dissolved corporation, it has been held that no taxes on profits can be assessed against the stockholders until the assets have actually been distributed. Wells Fargo Bank and Union Trust Co. v. Blair, 26 F. (2d) 532; Mrs. Grant Smith v. Commissioner, decided October 12, 1932, C.O.H. Decision No. 7768, Docket No. 43300.

In the Wells Fargo case, the Court held:



"The California courts, construing section 400 of the Code, hold that the trustees have no legal title to the assets of the corporation, but that upon dissolution the legal title to the assets of the defunct corporation is vested in the stockholders. This, however, is not decisive of the exact time when the stockholder realizes his income from the corporation. The assets are held by the trustees in liquidation for the purpose of the payment of the indebtedness and the expenses incurred in closing up the affairs of the corporation. The assets are in possession of the trustees for that purpose, and may be used in part or in whole by the trustees, if necessary, in liquidation of the liabilities of the corporation. It logically follows that the stockholders' rights to the property of the defunct corporation can only be measured when the property to which they are entitled is subject to distribution, which cannot occur until the assets of the corporation have been collected and its indebtedness discharged. For the collecting of the assets the trustees are given full and complete power, even 'to sue for and recover the debts and property of the corporation'. During this period the directors, as trustees, have the exclusive possession of the property of the corporation, and the power to sell or dispose of it for the purpose of liquidating and settling the affairs of the corporation. When all this has been accomplished, and the residue of the property of the corporation, belonging to the stockholders, remaining in the hands of the trustees, then, and not until then, are the stockholders entitled to the possession of the assets under distribution."

In the Smith case, the Board approved the decision in the Hells Ferry case, and further held:

"Respondent . . . concedes that when the liquidating trustees, Hauser, Colman and Mrs. Grant Smith, took charge of the property of the corporation after the order of dissolution, it did not amount to a distribution of said property to the stockholders of said corporation, but respondent contends that, when the liquidating trustees entered into a trust agreement with the Metropolitan National Bank of Seattle, by which it was agreed that the Bank should complete the liquidation, which arrangement was concurred in by the administrators of the Estate of Grant Smith, deceased, and by the two beneficial owners

of the assets of said corporation, that this was a turning over of the assets of the corporation to the two stockholders, Messers and Mrs. Grant Smith, and that although they did not actually receive these assets in 1925, they constructively received them in that year. Hence the transaction was taxable to petitioners. We do not agree to respondent's contention. We view the trust instrument entered into by the liquidating trustees with the bank as largely one of convenience by which the bank, because of its superior facilities, was to complete the liquidation, turning over to the stockholders of the corporation the proceeds resulting from sales, as fast as it was expedient to do so. Until the stockholders actually received the assets or the proceeds resulting from the sale thereof, there was no receipt by them.

#### CONCLUSION

It is respectfully submitted that the former partnerships of A. Overholt and Company and West Overton Distilling Company were dissolved by the death of the late H. G. Frick prior to 1920; that upon the death of Mr. Frick, Messrs. A. W. and R. B. Mellon, the survivors, became the liquidating trustees of these dissolved partnerships in liquidation, and as such, during the year 1920, were separate taxable entities; that the liquidating trustees had a reasonable time in which to liquidate the affairs of said companies; that the liquidation of said companies could not have been accomplished by the liquidating trustees during the year 1920, and because of legal and practical restrictions no distributions of partnership assets could have been made; that Messrs. A. W. and R. B. Mellon, individually, during the year 1920 kept their accounts and filed their income tax returns upon the so-called cash receipts and disbursement basis; and that no distributions



was actually made by the liquidating trustees to Messrs. A. W. and R. B. Mellon, individually, during the year 1920, and that therefore the profits of the liquidating trustees of the two partnerships should not be included in the gross income of the two surviving partners as individuals.

B. S. Shepard

J. P. Shepherd

Attorneys for Taxpayers



*Bill of Exceptions—Discussion.*

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*Mr. Eustace:*

Demand is now made on plaintiffs in these cases that the books of the partnerships of A. Overholt & Company and West Overton Distilling Company, showing the transactions for the years 1920 to 1925, inclusive, be produced, it having been previously agreed by counsel that the books would be produced in court.

*Mr. Frazer:*

The books are in court and are ready for submission to counsel for the Government, if the Court rules it is proper to do so. I think first they should state the purpose for which they wish the books and what they intend to prove by them.

*Mr. Eustace:*

We could have saved time if we could have had the books before.

*Mr. Frazer:*

They were here all day yesterday.

*The Court:*

Well, you have some purpose in demanding them, I presume.

*Mr. Eustace:*

The purpose of asking for the production of the books is to rebut the allegations of the statement of claim and in the Reply that no distributions were made of the partnership income until the final winding up of the affairs of the partnerships in 1925.

*Mr. Frazer:*

If the Court please, in Paragraph 20 of the statement of claim it is specifically stated that plaintiff "did not actually receive any payment from the liquidating trustees until final distribution in liquidation in the year 1925". That was not denied by the defendant, and it was therefore admitted for the purposes of this case; and it is not proper for defendant at this time to attempt to prove that any distribution was made.

*Mr. Eustace:*

Calling attention to Paragraph 18 of the statement of claim, on page 6, where it is averred "although no part of the so-called profit from the liquidation of said partnerships was received from plaintiff until final distribution in the year 1925, nor was any part of said amount available to or subject to his demand", to which answer was made as follows—page 5 of the affidavit of defense: "Defendant denies that any part of said sums should not have been included as taxable income in plaintiff's return for the year 1920, and on the contrary alleges that the entire income of the partnerships of A. Overholt & Company and West Overton Distilling Company for the year 1920 was taxable to the plaintiff and to the parties interested in said partnerships, as provided in Section 218 of the Revenue Act of 1918"; and then, beginning down at the bottom of that page, second line from the bottom, "Defendant denies that no part of said sums was received by plaintiff until the year 1925, and denies that no part thereof was available to or subject

*Bill of Exceptions—Discussion.*

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to plaintiff's demand, and on the contrary alleges that said sums were either received by the plaintiff during the year 1920 or were in all respects the property of the plaintiff available to him and subject to his disposition during said year."

*Mr. Frazer:*

If the Court please, in that Paragraph 18, if your Honor will examine it, the statement refers to \$48,000 received from the operation of A. Overholt & Company and the sum of \$5960 received from the West Overton Distilling Company, and those sums were actually—while they were not received by the plaintiffs in these cases, they were credited to them and accounted for by them in their income tax returns for the year 1920. That is all that has reference to in that paragraph 18. We admit that those—while we do not admit that we actually received those amounts, we did charge ourselves with them in our income tax returns for 1920. It is paragraph 20 that refers to the distribution from the liquidation of the company. It seems to me clear that paragraph 18 refers only to those two amounts for the year 1920.

*The Court:*

I think, since you have put that in, Mr. Frazer, they are entitled to deny that fact as to the \$48,000.

*Mr. Frazer:*

We admitted that the \$48,000 was taxable; we included it in our returns and paid the tax on it.

*The Court:*

But you have included it in this statement.



*Mr. Frazer:*

There is no claim for refund on that. Our only claim is for the \$190,000 in one case, and \$180,000 in the other, which were additional taxes assessed by the Commissioner. We make no claim for refund on the \$48,000.

*The Court:*

Why was it put in your statement?

*Mr. Frazer:*

The statement there is merely what we paid; and your Honor will see, if you read further along, paragraph 19: "The Commissioner increased plaintiff's share of the so-called net income or profits during the liquidation of A. Overholt & Company and West Overton Distilling Company for the year 1920 from \$48,350.74 and \$5,960.55 as reported on the return to \$281,779.95 and \$52,814.28 respectively." Now, it is only the additional assessment referred to in paragraph 19 that we are suing to recover here.

*The Court:*

What have you to say to that, sir?

*Mr. Eustace:*

We still insist that we have the right to rebut the allegation of the statement of claim which is denied, and for that reason we insist that the books should be produced and we be given the opportunity to offer them in evidence for that purpose. This is part of the issues in this case.

*Bill of Exceptions—Discussion.*

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*The Court:*

How are they? That is exactly the point on which I would like you to enlighten me, if you can.

*Mr. Eustace:*

Well, I think we could expedite this matter considerable, if your Honor please, if we could have the books for about five minutes, and then we could point out exactly what part we wish to introduce in evidence. It would simplify the matter greatly and expedite this trial.

*The Court:*

This is rather a serious question. I think, before a party might be entitled to go through his opponent's books for the purpose of investigating, he ought to show what the materiality is of the subject matter, which he wants to introduce or expects to introduce from them.

*Mr. Eustace:*

We believe we have already done that by the statement of claim with reference to these allegations—the statement of claim and the denial.

*The Court:*

Well, I am afraid, if you cannot make me believe it, I will have to rule against you. I will overrule your motion and give you an exception. That paragraph 20, of course is no denial whatsoever of the general allegation there; that other relates to what does seem to me to be an immaterial part of this particular answer, because there is no part of it to recover the amounts named in that eighteenth paragraph.

*Mr. Eustace:*

With reference to paragraph 20, may I call the Court's attention to this denial: In the latter part of the paragraph of the statement of claim it is stated that "on the profits so reported (referring to the two partnerships), although he did not actually receive any payment from the liquidating trustees until final distribution in liquidation in the year 1925", which the defendant has denied in the last sentence—I beg your pardon, if the Court please. Paragraph 20, that is a conclusion, requiring no denial.

*The Court:*

No, that presents your conclusion of the matter.

*Mr. Eustace:*

But the latter part of paragraph 22 contains this sentence—in the statement of claim—"The amounts actually received in liquidation in the year 1925 included the so-called profits and losses of the liquidating agent for all said prior years." That has been denied in the affidavit of defense, in the last four lines of paragraph 22. And if it is necessary, to make that a good defense, defendant now asks leave to amend by adding thereto: "and on the contrary avers that the amount actually received by the plaintiff in the year 1925 in liquidation of his investment in said partnerships included the profits and losses of the two partnerships for the year 1925 and for all prior years, less such amounts as may have been distributed during prior years."



*Bill of Exceptions—Discussion.*

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*Mr. Frazer:*

We object to the amendment of the affidavit of defense at this time: first, because it is too late, the defendant having waited until the conclusion of his case before doing so; and second, because it is contrary to the admission by defendant of the averments of paragraph 20 of the statement of claim.

*The Court:*

I will allow the amendment, noting an exception to the plaintiff in each case.

*Mr. Eustace:*

And defendant now asks leave to inspect the books of the partnerships of A. Overholt & Company and West Overton Distilling Company, for the purpose of more readily indicating the items which are necessary to support the proof to rebut the allegations in the statement of claim with reference to distribution.

*The Court:*

All right; the books being in court, the plaintiffs are directed to deliver them to the defendant.

*Mr. Frazer:*

Your Honor will allow us an exception?

*The Court:*

Yes; an exception is noted to the plaintiffs.  
(Short recess taken at this point.)

*Mr. Eustace:*

If the Court please, we have in the short time during the recess of the court made an examination of the

bills receivable account in the ledger of A. Overholt & Company, and been able to check it back through the journal entries and cash book entries, only for the year 1920; and if it would be of any assistance to the Court, it will be necessary to analyze that account until the final winding up of the affairs of the partnership in 1925; and we might go ahead with another line of proof, which connects up with the last exhibits introduced, while the revenue agent is making that analysis, and then we can offer the testimony very briefly.

*The Court:*

All right; you may do that.

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**E. L. Updike—Recalled.**

Thereupon, E. L. Updike, was recalled as a witness on behalf of the defendant and, having been previously duly sworn, was examined and testified as follows:

*Direct Examination:*

*By Mr. Eustace:*

Q. Mr. Updike, when you were on the stand yesterday, I believe you testified in connection with your qualifications,—that is, you have served for a period of eight years, beginning as accountant and later as an auditor, and I don't recall the other duties which you said you had?

A. I started in September, 1920, as assistant auditor, in various positions for approximately eight years,

*Bill of Exceptions—E. L. Updike, recalled—Direct.*

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rated from assistant auditor to assistant chief accountant and auditor.

Q. Will you state what your duties were in those positions with reference to making computations in connection with income tax returns of taxpayers?

A. The examination of all of the papers in the file at Washington, including the income tax returns, the agents' reports, correspondence or any other documents, and determining the tax liability of that particular taxpayer for that year—computed the tax, rather, and prepared the preliminary deficiency letters, and the final deficiency letters, setting forth the Commissioner's determination of the particular taxpayer's tax liability.

*By Mr. Shepard:*

Q. Then do I understand you made the determination, you say?

A. No; preparing the letters setting forth the Commissioner's determination.

*By Mr. Eustace:*

Q. During what period of time—or for how long a time, rather—were you engaged in that kind of work?

A. Approximately eight years in that type of work mainly.

Q. I will now ask you, Mr. Updike, whether or not you have made a computation in accordance with Bureau letter dated March 15, 1929, which is in evidence, eliminating yearly gains and losses, for the period from December 1, 1919, to December 31, 1924,



and taxing the balance of profits in liquidation of A. Overholt & Company and West Overton Distilling Company as ordinary income, in connection with the income tax liability of A. W. Mellon?

A. I have.

Q. Will you state the result of that computation?

*Mr. Frazer:*

Just a minute. I object to that. Perhaps we had better ask for a statement of the purpose of counsel for the Government.

*Mr. Eustace:*

We stated the purpose when we were offering the exhibits yesterday,—that, admitting it to be true as to everything that you contend for with reference to the year 1925, we would show by this computation that even though you were correct the plaintiffs have underpaid their tax for the year 1925, for which they are now seeking a refund.

*Mr. Frazer:*

If the Court please, I object to this computation, for the following reasons: First, we are not seeking a refund for the 1925 tax in this case, it is for the 1920 tax; second, because the purpose of this offer is not pleaded in the affidavit of defense or the amended affidavit of defense; third, neither this witness nor the Court has authority or power under the statutes to determine and assess a tax against plaintiff on the basis outlined in the offer; fourth, because any attempt to assess such a tax against plaintiff at this time is barred

*Bill of Exceptions—Defendant's Offer of Proof.*

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by the statute of limitations; fifth, because this offer is a shifting of the position of the Commissioner for about the fourth time and is not proper in this proceeding; sixth, because it is an attempt to attack collaterally the 1925 tax by the Commissioner; seventh, because the offer as I understood it—the offer of all of these exhibits, rather, was for the purpose of showing estoppel on the part of the plaintiffs, and not for the purpose in the offer; eighth, generally as incompetent, irrelevant and immaterial.

*The Court:*

Where in your pleadings do you have any matter which would serve as a foundation for this testimony?—Well, I don't know that you need to show that, because I cannot quite see how you could get it in, in any event, in order that it could serve as a set-off—

*Mr. Eustace:*

It is not for that purpose.

*The Court:*

Well, if it is not for that, what is it?

*Mr. Eustace:*

The charge is made in the statement of claim—we were just looking for it—on the theory of the plaintiff, by reason of the action of the Commissioner by asserting a deficiency for 1920, which is the subject of this suit, and the asserting of a deficiency for 1925 on the amounts that the plaintiff

*Bill of Exceptions—Defendant's Offer of Proof.*

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returned, resulted in double taxation on the same income; and we will show by this proof that there has been no double taxation. It is in rebuttal of that allegation in the statement of claim.

*The Court:*

But that is attacking a direct assessment.

*Mr. Eustace:*

Not attacking a direct assessment, but setting up the equity side of it; and if the plaintiffs have not in fact overpaid their tax, they haven't anything—

*The Court:*

Here are specific taxes that are the subject matter of the suit.—

*Mr. Eustace:*

Let me explain just a little bit farther: The Court will recall that during the time of the reading of the pleadings we objected to certain of the allegations which we stated were immaterial. Everything with reference to any year other than the year 1920 we were contending, and we still contend, are immaterial; but if the Court should determine we are wrong about that, then we don't want to be left without proof supporting the Government's side of the issues with reference to facts necessary to refute those allegations, if they are material. If they are not material, they can be disregarded. It also comes under the Third Defense which we set up, treating it as a trust, which they now claim it was.



*Bill of Exceptions—Defendant's Offer of Proof.*

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*Mr. Frazer:*

If the Court please, the tax was assessed for 1920 and paid; the tax was assessed for 1925 and paid. In both cases that tax was assessed by the Commissioner. The Commissioner has had plenty of opportunity to correct his assessment in each case, if he saw fit to do so; he has not done so. And certainly the determination of the tax cannot be attacked collaterally in this proceeding at this time, and certainly they cannot set off on our claim on a statement of this kind, claim that we have not overpaid our 1925 tax.

*Mr. Eustace:*

In paragraph 28, if the Court please, of the statement of claim they claim double taxation, and that is one of the paragraphs on which we made the objection as irrelevant and immaterial, and on which we say that if the Court decides adversely to our contention in that respect, then we are left without any proof rebutting the inference at least of the allegation in the statement of claim.

*The Court:*

Now, let us see if we understand each other. They allege that they were assessed for the year 1920 a certain tax; they allege that on the same subject matter, or on the same income, of whatever nature it is, they were also assessed upon the same subject matter for the year 1925, a tax,—in other words, a double taxation. They seek to recover the 1920 tax, since it is their theory that that is the

*Bill of Exceptions—Defendant's Offer of Proof.*

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one which was wrongfully collected. Now you expect to prove by this witness that for other years, and at other times, and wherever there has been an assessment, that there was an error in the assessment, or in the return and the assessment for other years. Is that the scope of your offer now?

*Mr. Eustace:*

This proof will show that, taking the amount determined by the Commissioner as the amount for 1925, which plaintiffs now contend included the incomes for the year 1920 and the incomes and losses for the intervening years, we propose to deduct those amounts in this computation and to show that the tax on the remainder amounts to more than the plaintiffs claim they are entitled to have back for 1925.

*The Court:*

Unassessed?

*Mr. Eustace:*

For the year 1925, for which they have a claim for refund pending.

*Mr. Frazer:*

May I say just a word, if the Court please? Our allegation is that we paid a tax on this liquidating income in 1920 under an assessment by the Commissioner; and that he also included the same income or liquidating profits—whatever you call it—in plaintiffs' income for 1925, and then "he has assessed and collected a tax on the same income in

*Bill of Exceptions—Defendant's Offer of Proof.*

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each of said years." Now this testimony would not contradict that at all. They don't deny that we have paid the tax on the same income in two years; all they are doing now is to make some recomputation here, which is not binding upon the Commissioner or anybody else, to indicate that perhaps if they had assessed it on a different basis in 1925 the result would have been different. It doesn't rebut our allegation that we were assessed and paid this tax on the same money in two different years.

*The Court:*

I cannot see how it is admissible at all, gentlemen. I shall have to sustain the objection, and note you an exception.

*Mr. Eustace:*

At this time the defendant offers to prove by this witness that a computation of the tax of the plaintiff A. W. Mellon for the year 1925, in accordance with Bureau letter dated March 15, 1929, eliminating yearly gains and losses for the period December 1, 1919 to December 31, 1924, and taxing the balance of the profits in liquidation of A. Overholt & Company and West Overton Distilling Company as ordinary income, will show that the plaintiff A. W. Mellon has underpaid his tax for the year 1925 in the amount of \$81,971.53.

*Mr. Frazer:*

I object to that offer, for the reasons given just previous to this question; I renew my objection.



Bill of Exceptions—Defendant's Offer of Proof.

*The Court:*

That offer does not contemplate actual assessments formally made by the Commissioner.

*Mr. Eustace:*

No.

*The Court:*

The objection is sustained, and exception noted.

*Mr. Eustace:*

Defendant now offers proof by this witness that in connection with the income tax of R. B. Mellon for the year 1925 a computation in accordance with Bureau letter dated March 15, 1929, eliminating yearly gains and losses for the period from December 1, 1919, to December 31, 1924, and taxing the balance of the profits in liquidation of A. Overholt & Company and West Overton Distilling Company as ordinary income, will show that R. B. Mellon underpaid his tax for 1925 in the amount of \$48,232.62.

*Mr. Frazer:*

We object to that offer, for the same reason.

*The Court:*

Objection sustained, and exception.

Thereupon, the witness was excused.

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*Bill of Exceptions—Donald A. Banks—Direct.*

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**Testimony of Donald A. Banks.**

Thereupon, Donald A. Banks was called as a witness on behalf of the defendant and, having been first duly sworn, was examined and testified in substance, as follows:

*Direct Examination:*

*By Mr. Zeitzius:*

My name is Donald A. Banks. I am an internal revenue agent and reside at Pittsburgh, Pennsylvania. I have been an internal revenue agent and acting as such since March, 1922. My duties during all of the time since 1922 have consisted of examining books and records of individuals and corporations in order to ascertain their income tax liability.

Q. Directing your attention to Plaintiffs' Exhibit No. 3, being a partnership return on form 1065 for the period January 1, 1920, and ending December 31, 1920, of A. Overholt & Company, which is already in evidence, and specifically to Schedule "E" attached thereto, being the balance sheet of A. Overholt & Company, and the item of Bills Receivable which is shown thereon as of January 1, 1920, in the sum of \$1,915,000, and as of December 31, 1920, in the sum of \$2,665,600, can you tell from an examination of the books of A. Overholt & Company just how that increase occurred in bills receivable?

*Mr. Frazer:*

If the Court please, I understand that my former objection applies to this testimony, or shall I make additional objection?

*The Court:*

Well, I don't remember just what the condition of the record is, Mr. Frazer.

*Mr. Frazer:*

Well, to clarify it then, I object to any testimony as to bills receivable of A. Overholt & Company, as immaterial and irrelevant, and not tending to show any distribution of assets of A. Overholt & Company to the partners, or surviving partners, or any other person.

*Mr. Zeutzius:*

That is the very thing, your Honor, that this testimony will tend to show.

*The Court:*

We will overrule the objection for the present, and note an exception.

A. Why, this schedule shows an increase in bills receivable between January 1, 1920, and December 31, 1920, of \$750,000.

Q. Have you examined the books?

A. I examined the bills receivable account in the A. Overholt & Company ledger.

Q. Now, in connection with that examination, will you state what is shown by the books with respect to the increase in that item during the year 1920?

*Mr. Frazer:*

It seems to me, if the Court please, the best evidence is the production of the books, themselves.



*Bill of Exceptions—Donald A. Banks—Direct.*

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*The Court:*

He must, of course, be shown to have made definite examination of the books, and show that his testimony is based upon that examination and is a summary of what he found in the books. Of course the books may speak for themselves in that respect, and may not, I don't know.

Q. Will you kindly get the books showing the accounts receivable, which you examined?

(The books of the A. Overholt & Company and West Overton Distilling Company were in court pursuant to agreement between counsel.)

A. (Witness produces book.) This is the general ledger—

*Mr. Frazer:*

If the Court please, so that the record may be straight, I object to the testimony as to bills receivable from the books of the company, as irrelevant and immaterial.

*The Court:*

The objection is overruled for the present, and exception noted.

Q. Will the witness find in the general ledger of A. Overholt & Company the account entitled "Bills Receivable," representing the item referred to beginning with January 1, 1920, to the closing of the account?

A. Here it is (indicating), in the ledger, page 8, of A. Overholt & Company.

*Mr. Zeutzius:*

I now offer in evidence from the original ledger produced by counsel for plaintiffs the account

*Bill of Exceptions—Defendant's Exhibit "MMM".*

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entitled "Bills Receivable," from page 8 thereof, commencing with January 1, 1920, down to and including the closing thereof on February 11, 1926.

*Mr. Frazer:*

Objected to, as irrelevant and immaterial, and not tending to show distribution of partnership funds to the partners.

*The Court:*

We will overrule that objection for the present, and note an exception.

Which said defendant's exhibit, marked "MMM," so offered and admitted in evidence is in words and figures as follows:

**Defendant's Exhibit "MMM".**

(Page 592 a.)





*Bill of Exceptions—Donald A. Banks—Direct.*

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I examined that account for the entire period and find with respect to 1920 that the books show a debit balance in the bills receivable account of A. Overholt & Company on January 1, 1920 of \$1,915,000; that there were credited to the bills receivable account of the A. Overholt & Company, as moneys paid back to it by R. B. Mellon, the sums of \$35,000, \$35,000 and \$30,000 on January 3, 10 and 19, 1920, respectively. On January 21, 1920, there was a credit item in this account of \$50,000 which tended to reduce the amount R. B. Mellon owed to the company and at the same time was charged to expenses on the books of the company as of January 21, 1920. During the year 1920, the books show that there was paid to A. W. Mellon \$400,000 in cash, and the amount was credited to cash and debited to the bills receivable account; also that R. B. Mellon received \$400,000 in cash, which was debited to the bills receivable account and credited to cash; also that A. W. and R. B. Mellon jointly received \$100,000, debited to bills receivable and credited to cash. In the same way R. B. Mellon paid back the total sum of \$150,000 to the partnership on January 3rd, 10th, 19th and 21st, 1920. To summarize the net result for the entire year of 1920, the bills receivable account for 1920 had increased \$750,000. That was occasioned by payments of \$900,000 to A. W. and R. B. Mellon, and a payment to the partnership by R. B. Mellon of \$150,000, or a net of \$750,000 for the year. The \$150,000 is explained in the cash book, showing payments of cash, which I have examined. By way of explanation of those payments to the Mellons in 1920, the cash book of A. Over-

holt & Company shows that on January 21, 1920, \$5,000 was paid to R. B. Mellon, credited to cash and charged to bills receivable, with the notation "R. B. Mellon account loan." That ordinarily would mean that the partnership loaned R. B. Mellon \$5,000, and it was set up as a bills receivable on the books of the company. The cash book shows, p. 61, that on August 2, 1920, cash was credited \$100,000, bills receivable debited \$100,000, with the notation "R. B. Mellon account loan." The cash book explanation is that the partnership loaned R. B. Mellon \$100,000 and set it up on their books as bills receivable. The cash book, p. 65, shows that on September 14, 1920, \$400,000 was paid to A. W. Mellon, cash credited, bills receivable debited, with the notation "A. W. Mellon loan," and the same day there was paid to R. B. Mellon \$90,000, bills receivable debited, with the notation "R. B. Mellon loan." The cash book explanation is that the partnership loaned A. W. Mellon \$400,000 and R. B. Mellon \$90,000. The cash book shows, p. 66, that on September 23, 1920, cash was credited \$100,000, and bills receivable debited \$100,000, with the notation "A. W. and R. B. Mellon loan." The cash book explanation of that is that it was a loan by the partnership to A. W. and R. B. Mellon jointly. The cash book, p. 69, shows that on October 27, 1920 the partnership paid R. B. Mellon \$40,000, credited cash and debited bills receivable, with the notation "R. B. Mellon account loan." That is explained as a loan of \$40,000 to R. B. Mellon by the partnership. The cash book, p. 70, shows that on November 11, 1920, the partnership paid R. B. Mellon \$10,000,

*Bill of Exceptions—Donald A. Banks—Cross.*

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credited cash and debited bills receivable, with the notation or explanation "R. B. Mellon account loan," which would mean a loan by the partnership to R. B. Mellon. The cash book, p. 70, shows that on November 13, 1920, \$50,000 was paid, cash credited and bills receivable debited with the notation "R. B. Mellon account loan," evidently a loan from the partnership to R. B. Mellon of \$50,000. The cash book, p. 70, shows that on November 19, 1920, \$50,000 was paid to R. B. Mellon with the notation "R. B. Mellon account loan." That is explained as evidently a loan to R. B. Mellon by the partnership. The cash book, p. 72, shows that on December 13, 1920, \$55,000 was paid to R. B. Mellon, bills receivable debited, cash credited, with the notation "R. B. Mellon account loan"; evidently a loan to R. B. Mellon. That concludes all of the charges to the bills receivable account for 1920 there are also some credits, that have been explained.

*Cross Examination:*

*By Mr. Frazer:*

Q. I call your attention again to page 8 in the bills receivable book (Defendant's Exhibit "MMM," *supra*) and ask you what that shows as to repayment of loans in January and February, 1921, by Mr. A. W. Mellon, Mr. R. B. Mellon, and A. W. and R. B. Mellon?

A. The bills receivable account in the general ledger is credited on January 25, 1921, to the extent of \$10,000, showing that R. B. Mellon repaid the partnership \$10,000 cash. February 7, 1921, the account is credited with \$450,000 cash received from A. W. and



R. B. Mellon jointly; February 7, 1921, the account is credited with \$400,000 cash received from A. W. Mellon; February 7, 1921, the account is credited with \$385,000 cash received from R. B. Mellon.

*Re-direct Examination:*

*By Mr. Zeutzius:*

Q. You have been questioned concerning the items credited in 1921, described as repayments by the plaintiffs. What is the total amount for 1921 so described on the accounts receivable account?

A. The total repayments for the year 1921, \$1,295,000.

Q. Please state whether or not there were any payments to Messrs. R. B. and A. W. Mellon during 1921.

*Mr. Frazer:*

I object to this, as irrelevant and immaterial. We are dealing with the year 1920 and not with the year 1921.

*Mr. Zeutzius:*

In that connection, my good friend has introduced the credit side of the ledger for 1921; he now objects to the debit side, which shows—or whereby I offer to show the amount paid to the Messrs. Mellon in 1921 approximately equaled the amounts that purport to have been repaid, so that the situation will be as to 1920 that nothing has been repaid as to the distributions made in 1920, testified to in direct examination by the witness.

*Bill of Exceptions—Donald A. Banks—Re-cross.*

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*The Court:*

The objection is overruled for the present, and an exception noted.

A. In 1921 there were cash payments on February 10 to A. W. Mellon \$400,000, \$400,000 to R. B. Mellon the same date, and \$400,000 to H. C. Frick Estate on the same date.

*By Mr. Frazer:*

Q. Were there additional payments made to the partnership by the repayment of borrowed money during the year 1921?

A. In 1921?

Q. In 1921, in addition to those you have testified to?

A. Yes. You asked me—

Q. Only as to February 7?

A. Yes; and then from July to December. In July and November there was \$50,000 repaid by the individuals.

Q. Were there additional repayments in the year 1922?

*Mr. Zeutzius:*

I don't like to be in position of objecting, because as we carry this on to the conclusion I think it will appear that at no time did the so-called repayments equal the payments of the distributions, or overcome them.

*The Court:*

Well, you can show it by the accounts or in some way by synopsis.

*Mr. Frazer:*

I can do it in just a minute's testimony, if the Court please.

*The Court:*

All right; the objection is overruled.

A. In the year 1922 the ledger account shows \$90,000 repaid to the partnership by the individuals.

Q. You say payments to the partnership; you don't mean by that payments on account of loan?

A. Cash received by the partnership and credited to the bills receivable account. All payments by the partnership or by the individuals were in the bills receivable account on the ledger of the corporation, either debited or credited.

Q. And that indicates that they were payments on account of the loans shown on the other side of the ledger?

A. Yes.

*Mr. Zeutzius:*

With respect to the book, of course we will ask that the book or books remain until a transcript can be taken of the account which has been offered.

*Mr. Frazer:*

If the Court please, we will furnish a photostatic copy of that page, if that will be satisfactory.

*Mr. Zeutzius:*

That is satisfactory.



*Bill of Exceptions—Plaintiffs' Offers.*

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*Mr. Frazer:*

Then it is agreed that a photostatic copy may be substituted for the page offered.

The ledger page referred to is that which was previously offered, marked Defendant's Exhibit "MMM."

Thereupon the defendant rested.

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The plaintiffs in each of said consolidated causes thereupon offered the following as their evidence in rebuttal:

*Mr. Frazer:*

If the Court please, the defendant having offered a number of exhibits on the theory that this tax should be rightly collected from the trust, for the purpose of showing that the Estate of Henry C. Frick has been distributed, and that if this were done there could be no contributions from the Estate to the surviving partners, I now offer in evidence certified copy of decree of the Orphans' Court of Allegheny County at No. 251 December Term, 1931, the decree being entered on December 24, 1931, for the purpose of showing final distribution of the estate at that time to the residuary legatees, except as to the sum of \$5,000 distributed to the accountants, or executors, for any additional federal income tax, personal property tax or other obligations, and the surplus to follow this decree. This is offered as Plaintiffs' Exhibit No. 5.

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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*Mr. Eustace:*

To which the defendant objects, for the reason it is incompetent, irrelevant and immaterial, and does not tend to prove or disprove any issues involved in this case; is hearsay, and not binding on the defendant.

*The Court:*

The objection is overruled and exception noted.

Which said plaintiffs' exhibit, so offered and admitted in evidence, is incorporated herein by reference and made part hereof, the original of said exhibit having been duly certified to the Circuit Court of Appeals with the transcript of record and as part thereof, pursuant to stipulation between counsel and an order of this Court that said exhibit be sent up in its original form, with, and as part of, the transcript of record, as appears elsewhere herein.

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**Testimony of John G. Buchanan.**

Thereupon, John G. Buchanan was called as a witness in rebuttal on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

*Direct Examination:*

*By Mr. Frazer:*

Q. Mr. Buchanan, you are a member of the bar of Allegheny County?

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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A. Yes, sir.

Q. And have been practicing for some years?

A. Yes, sir.

Q. You are a member of the firm of Smith, Buchanan, Scott & Gordon?

A. Yes.

Q. You have done a considerable amount of work in connection with income and estate taxes?

A. Some work, yes.

Q. Did you represent the Estate of Henry C. Frick in connection with its settlement of income and estate taxes?

A. Yes; more particularly, its income taxes, although to some extent its estate taxes as well.

Q. In connection with income and estate tax on the Estate of Henry C. Frick, did you have up with the Bureau of Internal Revenue at Washington the question of the taxes growing out of the liquidation of A. Overholt & Company and the West Overton Distilling Company?

A. I did.

*Mr. Eustace:*

Just a moment. That is objected to, as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issues involved in this case, and not proper rebuttal testimony.

*Mr. Frazer:*

If the Court please, they have introduced a great number of certified copies of letters, records, returns, and so forth; and it is our purpose by this



testimony to show that the Department at Washington settled the tax against the H. C. Frick estate on the basis that the sale of the assets in liquidation was a sale of capital assets and was taxable in the year 1925, the year of liquidation; that when this settlement was proposed it was communicated to counsel for A. W. and R. B. Mellon, the other partners, who agreed that the settlement should be made on that basis, and that was communicated to the representatives of the Department at Washington; the purpose being to show that at this time it would be unjust, inequitable and unfair to change the basis of settlement to a different one, and to compel the partners to have settlement on a different basis.

*Mr. Eustace:*

If the Court please, the basis for computing the gain or loss in connection with arriving at the income tax due from an estate is on a different basis and under a different statute entirely from that involving individuals, and the basis of values is entirely different; and this offer of testimony has no relevancy or materiality to any of these issues. The Estate of Henry C. Frick is not a party to this proceeding, and is not involved, and any action that the Commissioner may have taken with reference to that taxpayer does not preclude the Commissioner from taking a correct action against some other taxpayer; and we insist upon the objection.

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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*Mr. Frazer:*

If the Court please, I do not understand there is any difference in settlement with an estate and settlement with an individual in the liquidation of a partnership, as in this case. It is a question of income and tax in the year in which the income is received.

*The Court:*

These were individual returns, however, were they not, that is, of the various individuals?

*Mr. Frazer:*

Yes.

*The Court:*

I have my doubts, but I have been allowing everything to go in, and will rule on it a little bit later; and we will get along better without much discussion on it, I take it, now. I will allow it to go in, and note an exception.

Q. When was the settlement made with the Bureau of Internal Revenue in connection with Mr. Frick's income taxes on this liquidation?

*Mr. Eustace:*

Same objection.

*The Court:*

Well, you should understand that you have an exception granted to the whole subject matter.

A. In the year 1928.

Q. Had you had the matter under discussion for some time prior to that with the Department?

A. Yes.

Q. What was agreed to between the Estate and the Department with respect to the taxes on this liquidation?

A. The settlement was first discussed in a letter from the Bureau of Internal Revenue of September 14, 1927—

Q. Do you have that letter?

A. I have a copy of that letter, which was addressed to me as counsel for the Estate; not the original, but a copy transmitted with a letter from the Bureau of Internal Revenue. The letter covered the income taxes of the Estate of Henry C. Frick from December 3, 1919, being one day after Mr. Frick's death, to the end of the year 1922. The basis of taxing income from the liquidation of A. Overholt & Company and West Overton Distilling Company is shown by a comment under the heading "Period December 3 to 31, 1919"—Shall I read that comment into the record?

Q. If you will, please.

*Mr. Eustace:*

Just a moment. That is objected to. If this exhibit is competent, it should be offered and received in evidence, so that it may become a part of the record.

*Mr. Frazer:*

I will have the whole letter offered, if you want.



*Bill of Exceptions—Plaintiff's Exhibit No. 6.*

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*Mr. Eustace:*

We will make an objection to it, and also to the reading from the letter, on the basis of the objection previously made.

*The Court:*

The objection is overruled, and exception noted, for the present.

Which said letter and attached statement was thereupon marked "Plaintiffs' Exhibit No. 6," and is in words and figures as follows:

**Plaintiffs' Exhibit No. 6.**

Sep 14 1927

IT:FAR

PL

H. C. McEldowney, *et al.*, Executors,  
Estate of Henry C. Frick,  
1924 Frick Building,  
Pittsburgh, Pennsylvania.

Sirs:

The reaudit of your income tax returns for the period December 3, to December 31, 1919, and the calendar years 1920 to 1923, inclusive, filed for the Estate of Henry C. Frick, discloses an overassessment of \$18,252.99 for 1919. The details of the various adjustments made are shown in the attached statement.

The overassessment shown herein will be made the subject of a Certificate of Overassessment which will reach you in due course through

Bill of Exceptions—Plaintiff's Exhibit No. 6.

the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with the provisions of Section 284 of the Revenue Act of 1926.

A copy of this letter is being furnished your representative, Mr. John G. Buchanan, in accordance with the authority conferred upon him.

Respectfully,

*Assistant to the Commissioner.*

Enclosure:  
Statement  
HEO/  
LQC-2

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STATEMENT

IT:FAR  
PL

In re: H. C. McEldowney, et al., Executors,  
Estate of Henry C. Frick,  
1924 Frick Building,  
Pittsburgh, Pennsylvania.

<i>Period</i>	<i>Deficiency in Tax</i>	<i>Overas- sessment</i>
December 3 to December 31, 1919		\$18,252.99 (Claim filed)
1920	None	
1921	None	
1922	None	
1923	None	

*Bill of Exceptions—Plaintiff's Exhibit No. 6.*

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The reports of the Internal Revenue Agent in Charge, dated February 26, 1925, May 20, 1926, May 10 and 27, 1927, have been reviewed and approved with the following exceptions:

Period December 3 to 31, 1919

Annual depreciation allowances have been adjusted to conform with the values and rates agreed upon in conferences held with your representatives in the case of Henry C. Frick, deceased. The revised depreciation allowance therefore is \$6,678.33, detailed schedule of which has been previously furnished you. In accordance with representations made at the conferences, expenses eliminated by the agent under Schedule I(a) have been allowed as a proper deduction.

In accordance with the provisions of Income Tax Unit Ruling 2166, C. B. IV-1 and the principles promulgated in S. M. 3256, C. B. IV-1, the aggregate dividends received have been included in taxable income.

The distributive partnership interest from A. Overholt and Company and the West Overton Distilling Company, as shown by the agent, has been eliminated from taxable income, as it is held by this office that the effect of the decedent's death serves to capitalize his interests in the respective partnerships.

Profit on the sale of Bankers Trust Company rights has been increased from \$12,341.95 as shown in the supplemental report to \$17,605.69. The agent's computations were made under the provisions of Article 39, Regulations 69. By Treasury Decision 4018, approved June 2, 1927, it is held



Bill of Exceptions—Plaintiff's Exhibit No. 6.

that the provisions of the pertinent Article will not be retroactively applied and will only govern sales taking place on or after January 1, 1925. The revised computation was explained to your representative at conference held May 13, 1927.

The corrected income is as follows:

Net income as shown by agent in

original report .....\$38,213.53

Add:

Profit on sale of rights ...\$ 17,605.68

Additional dividends ..... 160,109.50

Decreased depreciation ... 1,291.48

Elimination partnership

loss ..... 10,424.17

\$189,430.83

Less:

Increased expenses ..... 2,552.34 186,878.49

Corrected income ..... \$225,092.02

Personal exemption .....\$ 1,000.00

Dividends ..... 188,853.50 189,853.50

Income subject to normal

tax ..... \$ 35,238.52

Normal tax .....\$ 2,659.08

Surtax ..... 92,565.21

\$ 95,224.29

Previously assessed ..... 113,477.28

Overassessment .....\$ 18,252.99

1920-1921-1922-1923

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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At the conference held on April 27, 1927, your representatives requested a supplemental investigation in view of the recently promulgated Treasury Decisions 4010, 4011 and 4012. These decisions affect the determination of gain or loss on sales of decedent's property by the executors of estates in process of administration. The agent's additional reports have been received, the audit of which indicates that there is no taxable income for the calendar years 1920 to 1923, inclusive.

This communication supersedes office letter dated December 6, 1926.

The overassessment shown herein will be made the subject of a Certificate of Overassessment which will reach you in due course through the office of the Collector of Internal Revenue for your district and will be applied by that official in accordance with the provisions of Section 284 of the Revenue Act of 1926.

Q. I show you paper marked Plaintiffs' Exhibit No. 6, and ask you if that is the letter you just referred to?

A. It is; it is a copy sent to me as attorney of the letter sent to the executors.

Q. It came from the Department in Washington, did it?

A. It did.

Q. Did you communicate the contents of that letter to Mr. Seifert, the attorney for the other partners, A. W. and R. B. Mellon?

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

---

A. I communicated the contents of the letter to Mr. Seifert, so far as they had to do with the A. Overholt & Company and the West Overton Distilling Company.

Q. That is what I meant. And did you reach any understanding or agreement with respect to settlement on that basis?

*Mr. Eustace:*

That is objected to, as incompetent, irrelevant and immaterial, and not binding on the defendant.

*Mr. Frazer:*

This is preliminary to showing it was communicated to the representatives of the defendant prior to the settlement being made.

*The Court:*

I don't see very great force to it, but I have admitted all this other with respect to which I am in doubt. I will overrule the objection and note an exception, subject to subsequent ruling.

Q. (Question read).

A. Before or in the course of the hearings on the question of A. Overholt & Company income in Washington, in the case of the Estate of H. C. Frick, I conferred with Mr. Seifert as attorney for the other partners of that firm, and I was authorized by Mr. Seifert to say that the ruling made in the case of the Estate of H. C. Frick could be made also in the cases of the other two partners, which had not yet been reached in audit, as I understood. I so advised the conferees in Washington.



*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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*Mr. Eustace:*

I move to strike the answer, as not responsive, and incompetent, irrelevant and immaterial.

*The Court:*

I think it is responsive. The motion is denied, and an exception noted.

Q. What was the ruling made with respect to this income?

A. For the period December 3 to 31, 1919, the ruling was: "The distributive partnership interest from A. Overholt & Company and the West Overton Distilling Company as shown by the agent has been eliminated from taxable income, as it is held by this office that the effect of the decedent's death serves to capitalize his interests in the respective partnerships." On the same day a letter was received covering the years 1924 and 1925, in the case of the Estate of H. C. Frick, and rulings were made on the subject of A. Overholt & Company and West Overton Distilling Company income in that letter.

Q. What were those rulings?

A. For the year 1924 the ruling was this: "The deduction of \$15,846.49 distributive loss through partnerships of A. Overholt & Company and the West Overton Distilling Company has been eliminated to agree with similar action taken in prior years 1919 to 1923, inclusive." There was no discussion of the matter in connection with the taxes for the years 1920 to 1923, because there was no tax liability of the Estate of H. C. Frick in those years.

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Direct.*

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Q. What was the ruling in 1925—as to 1925 income?

*Mr. Eustace:*

We desire the same objection.

*The Court:*

Objection overruled for the present, and exception.

A. Shall I read into the record the ruling?

Q. Yes.

A. The ruling for 1925 is somewhat lengthy. It begins this way: "The following adjustments have been made in net capital gain as set up in Exhibit 'B' revised"—Perhaps I can show it to the attorney for the United States and have it copied into the record instead of reading all these figures.

*Mr. Eustace:*

Well, I think probably we had better wait until we cross examine.

Q. Well, can you give us the effect of that ruling?

*Mr. Eustace:*

That is objected to, as calling for a conclusion of the witness.

*The Court:*

Objection overruled, and exception noted.

A. The amount received by the estate in 1925—

Q. Just a moment. I mean the basis for the ruling; can you give that?

A. That is what I am trying to give. The amount received by the estate in liquidation in 1925 was shown,

*Bill of Exceptions—John G. Buchanan, in Rebuttal—  
Cross.*

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and the cost of the decedent's interest based on an amended balance sheet of December 2, 1919, and giving effect to adjustments made in the audit of the 1918 return, was shown; a comparison of those two figures showed a profit. A similar comparison in the case of the West Overton Distilling Company showed a profit; and these profits were shown in net capital gain. I would like to make this explanation, however: that this was not the final letter received by the Estate of H. C. Frick, which did not come until February of 1928. On account of other adjustments in tax liability, the taxpayer did not elect to take advantage of capital gain rates, because there would be no advantage in doing so, and therefore the ultimate tax was not at capital gain rates.

Q. The letter you just quoted, however, was based on the ruling that it was a capital gain?

A. It was; and that ruling was not changed.

Q. And all the income from the time of Mr. Frick's death until 1925 was included in the 1925 capital gain figure, was it?

A. Yes; the income of certain years and the loss of at least one year.

Q. Yes, the net income?

A. The net income.

*Cross Examination:*

*By Mr. Eustace:*

Q. Mr. Buchanan, I believe you stated that the letters from which you were making your statements



did not represent the final letters of the Commissioner of Internal Revenue?

A. That is correct; the final letter was dated February 16, 1928.

Q. And that involved a settlement, did it not, of the income tax liability of Henry C. Frick and the Frick Estate for a number of years?

A. The final letter covered the period from December 3, 1919, to the end of the year 1925.

Q. And included the year 1920?

A. It did.

Q. And as a matter of fact, there was no tax liability of the Estate of Henry C. Frick for the year 1920?

A. That is correct.

Q. So that it would not have made any difference so far as the manner and method in which the Commissioner treated the income of the two partnerships of A. Overholt & Company and the West Overton Distilling Company for the year 1920, as affecting the income tax liability for that year of the Frick Estate?

A. That is correct; it did not affect the liability for that particular year. May I correct that answer: It possibly did affect the liability for the year 1920, because the income from A. Overholt & Company was not included in the basis for taxation for that year. I believe, however, that other deductions would eliminate the tax for that year.

*Bill of Exceptions—Motion.**Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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*Mr. Eustace:*

That is all. We move to strike all the testimony of this witness, for the reason it is incompetent, irrelevant and immaterial, hearsay, and not binding on the defendant, and not proper rebuttal testimony, not tending to prove or disprove any issue involved in this case.

*The Court:*

The motion is denied, and exception noted.

Thereupon plaintiffs rested in rebuttal and no further evidence was offered by plaintiffs or defendant.

Thereupon, counsel for defendant orally renewed defendant's previous motion for judgment, but with the inclusion of additional grounds, in each of said consolidated cases on each ground therein stated, and the same, after being so made, were duly filed in writing and made part of the record, and as so made and filed are in words and figures as follows:

**Motion for Judgment on Behalf of the Defendant.**

(Caption No. 6980 Law.)

Comes now the defendant herein, by Horatio S. Dumbauld, United States Attorney for the Western District of Pennsylvania, and D. Lloyd Claycomb, Assistant United States Attorney for said District, his attorneys, and after the close of all the evidence and before submission of said case to the Court, and prior

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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to the announcement by the Court of its decision and the entry of final judgment, respectfully moves the Court for judgment in favor of the defendant and against the plaintiff herein, on the following grounds, to-wit:

1. Under and pursuant to the provisions of Section 30 of the Pennsylvania Partnership Act, March 26, 1915, P. L. 18 (59 P. S. 92), the partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

2. As a matter of law, the partnerships of A. Overholt & Co. and West Overton Distilling Company continued in existence throughout the year 1920.

3. As a matter of law, A. Overholt & Co. and West Overton Distilling Company were required to file partnership returns of income for the year 1920, in accordance with the provisions of Section 224 of the Revenue Act of 1918.

4. Under the provisions of Section 218 of the Revenue Act of 1918, A. W. Mellon was taxable upon his distributive share of the net income of each of the partnerships of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

5. The income of a partnership in process of liquidation is taxable for Federal income tax purposes to the individual members thereof in the respective years in which realized, earned, and received by the partnership.



*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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6. There is no warrant in law for postponing the taxation of a partnership in process of liquidation to the year in which the winding up of the affairs of the partnership is completed.

7. There is no warrant in law for the plaintiff's contention that the income of A. Overholt & Co. and West Overton Distilling Company was not taxable until A. W. Mellon had received payments exceeding the cost value of his interest in the partnerships as of December 2, 1919.

8. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick any additional amounts as income taxes on the income for the year 1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

9. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, was income from property held in trust.

10. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, on which the taxes involved in this action were assessed and collected, was income of a taxable trust or trusts.

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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11. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. earned during 1920, or the income of West Overton Distilling Company earned during 1920, was not distributed or distributable to A. W. Mellon, if such a trust or trusts existed.

12. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, on which the taxes in controversy in this action were assessed and collected, was not taxable to A. W. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect any amounts as the income tax liabilities of said organizations for the year 1920.

13. Plaintiff is estopped to assert and claim that the deficiency asserted; determined and assessed by the Commissioner of Internal Revenue against A. W. Mellon for the year 1920, was not lawfully assessed and legally collected.

14. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, then at the time the additional tax for the year 1920, in controversy, was determined, assessed and collected, A. W. Mellon was indebted to the United States as trustee, transferee, or distributee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income thereof for the

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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year 1920 in an amount in excess of the amount of \$202,502.22, collected by the defendant A. W. Mellon as a deficiency in tax and interest thereon for the year 1920.

15. In equity and good conscience the plaintiff ought not to recover of and from the defendant herein.

16. The taxes sought to be recovered in this action were lawfully assessed by the Commissioner of Internal Revenue and legally collected by the defendant from A. W. Mellon.

17. The pleadings and the evidence in this case, with every inference of fact that may be drawn from it, are insufficient in law to warrant a judgment against this defendant.

18. Under the law and the evidence, the record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiff and against the defendant.

19. The defendant, on the pleadings and the evidence in this case, is entitled to judgment dismissing plaintiff's Statement of Claim, at plaintiff's costs.

In the event the Court overrules defendant's foregoing motion for judgment, on any of the specific grounds therein set forth, defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further, excepts and prays that he be al-

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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¶ I move an exception or exceptions to the action and ruling of the Court in making and entering any findings of fact, and conclusions of law, or either thereof, requested by plaintiff.

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**Motion for Judgment on Behalf of the Defendant.**

(Caption No. 6979 Law.)

Comes now the defendant herein, by Horatio S. Dumbauld, United States Attorney for the Western District of Pennsylvania, and D. Lloyd Claycomb, Assistant United States Attorney for said District, his attorneys, and after the close of all the evidence and before submission of said case to the Court, and prior to the announcement by the Court of its decision and the entry of final judgment, respectfully moves the Court for judgment in favor of the defendant and against the plaintiffs herein, on the following grounds, to-wit:

1. Under and pursuant to the provisions of Section 30 of the Pennsylvania Partnership Act, March 26, 1915, P. L. 18 (59 P. S. 92), the partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

2. As a matter of law, the partnerships of A. Overholt & Co. and West Overton Distilling Company continued in existence throughout the year 1920.

3. As a matter of law, A. Overholt & Co. and West Overton Distilling Company were required to



*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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file partnership returns of income for the year 1920, in accordance with the provisions of Section 224 of the Revenue Act of 1918.

4. Under the provisions of Section 218 of the Revenue Act of 1918, R. B. Mellon was taxable upon his distributive share of the net income of each of the partnerships of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

5. The income of a partnership in process of liquidation is taxable for Federal income tax purposes to the individual members thereof in the respective years in which realized, earned, and received by the partnership.

6. There is no warrant in law for postponing the taxation of a partnership in process of liquidation to the year in which the winding up of the affairs of the partnership is completed.

7. There is no warrant in law for the plaintiffs' contention that the income of A. Overholt & Co. and West Overton Distilling Company was not taxable until R. B. Mellon had received payments exceeding the cost value of his interest in the partnerships as of December 2, 1919.

8. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick any addition-

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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al amounts as income taxes on the income for the year 1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

9. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, was income from property held in trust.

10. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, on which the taxes involved in this action were assessed and collected, was income of a taxable trust or trusts.

11. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. earned during 1920, or the income of West Overton Distilling Company earned during 1920, was not distributed or distributable to R. B. Mellon, if such a trust or trusts existed.

12. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, on which the taxes in controversy in this action were assessed and collected, was not taxable to R. B. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect

*Bill of Exceptions—Motion for Judgment on Behalf  
of the Defendant.*

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any amounts as the income tax liabilities of said organization for the year 1920.

13. Plaintiffs are estopped to assert and claim that the deficiency asserted, determined and assessed by the Commissioner of Internal Revenue against R. B. Mellon for the year 1920, was not lawfully assessed and legally collected.

14. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, then at the time the additional tax for the year 1920, in controversy was determined, assessed and collected, R. B. Mellon was indebted to the United States as trustee, transferee, or distributee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income thereof for the year 1920 in an amount in excess of the amount of \$187,787.17, collected by the defendant from R. B. Mellon as a deficiency in tax and interest thereon for the year 1920.

15. In equity and good conscience the plaintiffs ought not to recover of and from the defendant herein.

16. The taxes sought to be recovered in this action were lawfully assessed by the Commissioner of Internal Revenue and legally collected by the defendant from R. B. Mellon.

17. The pleadings, and the evidence in this case with every inference of fact that may be drawn from it, are insufficient in law to warrant a judgment against this defendant.

*Bill of Exceptions—Motion for Judgment.*

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18. Under the law and the evidence, the record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiffs and against the defendant.

19. The defendant, on the pleadings and the evidence in this case, is entitled to judgment dismissing plaintiff's Statement of Claim, at plaintiff's costs.

In the event the Court overrules defendant's foregoing motion for judgment, on any of the specific grounds therein set forth; defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further excepts and prays that he be allowed an exception or exceptions to the action and ruling of the Court in making and entering any findings of fact, and conclusions of law, or either thereof, requested by plaintiffs.

Thereupon, counsel for plaintiffs requested leave to file motions for judgment in favor of plaintiffs in each of said cases for the full amounts claimed.

*The Court:*

The motions of both the defendant and the plaintiffs may be filed.

Which said motions of plaintiffs, which were similar, are in words and figures as follows:

**Motion for Judgment.**

And Now, to wit, October 29, 1934, plaintiffs move (plaintiff moves, Law No. 6980), the Court to enter judgment in their (his) favor and against the defend-



***Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.***

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ant for the full amount of their (his) claim upon the pleadings and all the evidence.

Thereupon, defendant, by his counsel, with leave of court first had and obtained, filed his written request for special findings of fact and conclusions of law in each of said cases in words and figures as follows:

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**Defendant's Motion for Special Findings of Fact and Conclusions of Law.**

(Caption No. 6980 Law.)

Comes now the defendant in the above entitled cause by Horatio S. Dumbauld, United States Attorney for the Western District of Pennsylvania, and D. Lloyd Claycomb, Assistant United States Attorney for said District, his attorneys, and respectfully moves the Court to make and enter the following specific findings of fact, and to declare and enter the following conclusions of law, to-wit:

**FINDINGS OF FACT.**

1. The praecipe for summons in this action was filed on March 23, 1932, and the Statement of Claim herein was filed on October 24, 1933, by plaintiff, A. W. Mellon, a resident of the City of Pittsburgh, Allegheny County, Pennsylvania.

2. The defendant, D. B. Heiner, was duly appointed United States Collector of Internal Revenue for the Twenty-Third Collection District of Pennsyl-

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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vania on or about the first day of August, 1921, and from and after said date until on or about the thirtieth day of June, 1933, was the duly appointed, qualified, and acting Collector of Internal Revenue for said Twenty-third Collection District of Pennsylvania and a resident of the western judicial district of Pennsylvania.

3. During the year 1920, plaintiff kept his books and records and filed his income tax return for said year on the cash receipts and disbursements method of accounting. On or about the fifteenth day of March, 1921, plaintiff filed with the then Collector of Internal Revenue for said collection district, his Federal income tax return for the calendar year 1920. The tax liability shown on said return was \$919,777.86, which amount was duly assessed and paid.

4. On or about December 12, 1918, R. B. Mellon, A. W. Mellon, and Henry C. Frick entered into two separate written partnership agreements to trade and do business under the respective names of A. Overholt & Co. and West Overton Distilling Company, each being registered under the Fictitious Names Act of Pennsylvania. True and correct copies of said partnership agreements are attached to the Statement of Claim as Exhibits "A" and "B" and are by reference made a part hereof. In and by said partnership agreements R. B. Mellon, A. W. Mellon, and Henry C. Frick had equal one-third interests in each of said partnerships.

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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5. On or about January 1, 1919, the property and assets of a corporation bearing the name of A. Overholt & Co. were transferred to the partnership of A. Overholt & Co. At or about the same time the property and assets of a corporation bearing the name of West Overton Distilling Company were transferred to the partnership of West Overton Distilling Company. Included in the properties so received by said partnerships were large amounts of spirituous liquors stored in bonded warehouses.

6. The business of each of the partnerships of A. Overholt & Co. and West Overton Distilling Company consisted primarily of the storage, bottling and casing, and sale of spiritous liquors. The books and records in respect to the businesses and activities of said partnerships, and each of them, were kept by the accrual method of accounting.

7. Henry C. Frick died on or about December 2, 1919. Thereafter and throughout the year 1920 the business of each of the two partnerships of A. Overholt & Co. and West Overton Distilling Company was actively carried on and continued in exactly the same manner as prior to the death of Henry C. Frick. The net income earned by A. Overholt & Co. during the year 1920 in the ordinary course of business was \$845,339.86, computed in the following manner:

*Gross Income*

Whiskey sales, not less than	\$ 928,273.71
Less: January 1, 1920 whiskey inventory	\$ 794,235.38

*Bill of Exceptions—Defendant's Motion for Special  
Findings of Fact and Conclusions of Law.*

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Less: December 31, 1920 whiskey inventory . . . . .	697,307.34	96,928.04
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Gross profit on whiskey sales . . . . .		831,345.67
Sales of empty barrels, not less than . . . . .		6,609.31
Charges for bottling and casing, not less than . . . .		320,533.61
Storage charges, not less than . . . . .		42,550.50
Other operating income not allocated . . . . .		33,578.67
Interest received . . . . .		3,480.73
Rents received . . . . .		300.00
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Total . . . . .		\$1,238,398.49

*Deductions*

Salaries and wages . . . . .	39,600.01	
Insurance . . . . .	18,190.00	
Taxes . . . . .	31,132.86	
Storage expense . . . . .	23,446.60	
Bottling expense . . . . .	22,867.98	
Distilling expense . . . . .	46,311.27	
General expense . . . . .	35,912.08	
Expenses of Bradford of- fice . . . . .	3,519.59	
Cases, bottles, corks, other supplies and misc. . . . .	166,749.49	
Loss on Liberty Bonds . . . .	5,328.75	393,058.63
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Net income . . . . .		\$ 845,339.86



***Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.***

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The net income earned by West Overton Distilling Company during the year 1920 in the ordinary course of business was \$158,442.84, computed in the following manner:

***Gross Income.***

Sales less returns .....	\$ 218,050.31
Less: Inventory December 31, 1919 .....	\$ 121,135.00
Less: Inventory December 31, 1920 .....	93,819.44      27,315.56
Total .....	\$ 190,734.75

***Deductions***

Labor .....	8,188.92
Taxes .....	2,236.44
Depreciation .....	1,739.49
Loss on Liberty Bonds ....	507.50
Storage .....	1,211.40
Insurance .....	5,528.16
Other expenses—Bad debts, etc. ....	11,650.00
Salesmen's commissions ...	1,230.00
Total .....	32,291.91
Net income .....	\$ 158,442.84

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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8. During the year 1920 the sum of \$800,000 was distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick by A. Overholt & Co. In connection with such distributions said parties gave to A. Overholt & Co. non-interest bearing notes in the aggregate amount of \$750,000. The amounts so distributed were not intended to be loans from A. Overholt & Co. to said parties. At the time said distributions were made, there was no intention that said parties would pay said notes, and the same were not in fact paid but were returned to the makers thereof in 1925 at the time the property and assets then owned by A. Overholt & Co. and West Overton Distilling Company were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick. Said distributions were in fact distributions of a part of the 1920 income of A. Overholt & Co. to said parties. R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick received actual possession of that part of the 1920 income of A. Overholt & Co. represented by said distributions.

9. During the period from December 2, 1919, to and including December 31, 1920, the assets of A. Overholt & Co. and West Overton Distilling Company, including cash, were kept separate and were not commingled with the assets or cash of R. B. Mellon or A. W. Mellon.

10. On or about March 15, 1921, plaintiff and his brother, R. B. Mellon, caused to be filed with the Collector of Internal Revenue for the Twenty-Third Col-

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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lection District of Pennsylvania, a partnership return of income for the calendar year 1920 in the name of and for A. Overholt & Co. on official form 1065, the form provided by the Commissioner of Internal Revenue for the making of partnership returns of income. Plaintiff therein claimed and reported that A. Overholt & Co. was a partnership and that the income thereof for the year 1920 was distributable and taxable, one-third each, to plaintiff, his brother, R. B. Mellon, and the estate of Henry C. Frick.

11. The said return showed gross income of \$169,649.13, computed in the following manner:

Sales of empty barrels .....	\$ 6,609.31	
Bottling and casing .....	320,563.61	
Storage .....	42,550.50	
		<hr/>
Total .....		\$369,693.42
Less: Labor .....	\$ 12,859.41	
Revenue stamps .....	8,020.90	
Cases, bottles, corks, etc. ....	150,922.31	
Water and other ex- penses .....	10,757.98	
Storage, labor, and exp. ....	21,264.42	203,825.02
		<hr/>
Balance .....		165,868.40
Interest .....		3,480.73
Rentals .....		300.00
		<hr/>
Gross income reported .....		\$169,649.13

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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Deductions of \$19,268.15, together with a loss of \$5,278.75 from the sale of capital assets or investments shown on said return, resulted in the return showing a net income to be accounted for by the parties interested in A. Overholt & Co. of \$145,052.23. \$48,350.74 of said amount was reported on the return as distributable and taxable to plaintiff; \$48,350.74 of said amount was reported on the return as distributable and taxable to R. B. Mellon; and \$48,350.75 of said amount was reported on the return as distributable and taxable to the estate of Henry C. Frick.

12. Although the gross income reported on the return filed for A. Overholt & Co. did not include any amount for profit realized by A. Overholt & Co. on the sale of whiskey, a special schedule attached to said return disclosed that in the year 1920 A. Overholt & Co. realized a profit of \$646,327.63 on the sale of whiskey. Such profit is computed in the following manner:

Gross sale price of whiskey . . .	\$928,273.71
Less: January 1, 1920 whiskey inventory . . . . .	\$595,676.53
December 31, 1920 whiskey inventory . . . . .	498,748.49
	96,928.04
Gross profit on whiskey sales.	831,345.67
Less: Insurance . . . . .	16,000.00
Taxes . . . . .	3,000.00
Salesmen's salary and commission . . . . .	11,726.00
Storage . . . . .	23,446.60



*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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United States taxes paid	9,857.70	
Distillery labor, expense and maintenance .....	46,791.27	
Salaries .....	14,302.03	
Bradford office expense .	1,809.80	
Office rent and miscellaneous .....	3,039.02	
Adv. and other expense .	55,047.46	
Claim adjustment .....	1.84	185,021.72

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Net profit on whiskey sales .. \$646,327.63

13. Neither R. B. Mellon, A. W. Mellon, nor both acting jointly, filed, or caused to be filed an income tax return for the year 1920, covering any portion of the income of A. Overholt & Co. on the form prescribed for the making of returns by fiduciaries of a trust.

14. On or about March 15, 1921, plaintiff and his brother, R. B. Mellon, caused to be filed with the Collector of Internal Revenue for the Twenty-third Collection District of Pennsylvania, a partnership return of income for the calendar year 1920 in the name of and for West Overton Distilling Company on official form 1065, the form provided by the Commissioner of Internal Revenue for the making of partnership returns of income. Plaintiff therein claimed and reported that West Overton Distilling Company was a partnership and that the income thereof for the year 1920 was distributable and taxable, one-third each, to plaintiff, his brother, R. B. Mellon, and the estate of Henry C. Frick.

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15. Said return showed a gross income of \$27,735.48, computed in the following manner:

Gross sales. ....	\$47,729.00	
Costs of goods sold .....	20,127.92	\$27,601.08
		<hr/>
Rents received .....		134.40
		<hr/>

Gross income reported ..... \$27,735.48  
Deductions of \$9,853.84 shown on said return resulted in the return showing a net income to be accounted for by the parties interested in West Overton Distilling Company of \$17,881.64. \$5,960.55 of said amount was reported on the return as distributable and taxable to plaintiff; \$5,960.55 of said amount was reported on the return as distributable and taxable to R. B. Mellon; \$5,960.54 of said amount was reported on the return as distributable and taxable to the estate of Henry C. Frick.

16. Although a gross income of only \$27,735.48 and a net income of only \$17,881.64 was reported on the face of said return, balance sheets attached to said return disclose that during the year 1920 the net assets of West Overton Distilling Company were increased, not by \$17,881.64, but by \$156,539.02, or in the amount of \$138,657.38 in excess of the net income shown on the face of the return.

17. Neither R. B. Mellon, A. W. Mellon, nor both acting jointly, filed, or caused to be filed an income tax return for the year 1920, covering any portion of

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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the income of West Overton Distilling Company on the form prescribed for the making of returns by fiduciaries of a trust.

18. On his Federal income tax return for 1920, plaintiff included \$48,350.74 as income from the partnership of A. Overholt & Co., and included the sum of \$5,960.55 as income from the partnership of West Overton Distilling Company.

19. In the year 1921, the Commissioner of Internal Revenue caused an examination to be made by an Internal Revenue Agent of the partnership returns filed in the name of and for A. Overholt & Co. and West Overton Distilling Company for the year 1920, and the income tax return filed by plaintiff, for the year 1920. On December 20, 1922, the Commissioner mailed to plaintiff a preliminary letter showing a deficiency for 1920 of \$180,106.27. On December 16, 1926, the Commissioner mailed to plaintiff a preliminary letter showing a deficiency for the year 1920 of \$195,229.70. On February 21, 1927, the Commissioner mailed to plaintiff a final deficiency letter showing a deficiency in income tax for the year 1920 of \$190,419.70. On March 19, 1927, said deficiency of \$190,419.70, together with interest in the sum of \$12,082.52, was assessed against plaintiff. Thereafter, on or about March 23, 1927, the defendant notified plaintiff of said assessment. On or about April 2, 1927, plaintiff paid to defendant said sums of \$190,419.70 and \$12,082.52.

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20. In examining the partnership return filed in the names of and for A. Overholt & Co. and West Overton Distilling Company, the Internal Revenue Agent and the Commissioner accepted the manner and method of reporting the 1920 income of A. Overholt & Co. and the 1920 income of West Overton Distilling Company, and merely changed the amount of the incomes so reported. The Commissioner increased plaintiff's share of the net income of A. Overholt & Co. for the year 1920 from \$48,350.74 to \$281,779.95, by determining that the net income earned by A. Overholt & Co. during the year 1920 was \$845,339.86 (as set out in Paragraph 7 hereof), and taking one-third of said amount; or \$281,779.95 as plaintiff's share thereof. The Commissioner increased plaintiff's share of the net income of West Overton Distilling Company for the year 1920 from \$5,960.55 to \$52,814.28, by determining that the net income earned by West Overton Distilling Company during the year 1920 was \$158,442.84 (as set out in Paragraph 7 hereof), and taking one-third of said amount, or \$52,814.28 as plaintiff's share thereof.

21. On or about January 20, 1923, plaintiff filed with the Commissioner a protest against the action set out in the Commissioner's preliminary letter of December 20, 1922. On January 31, 1927, plaintiff filed with the Commissioner a protest against the action set forth in the Commissioner's preliminary letter of December 16, 1926. In neither of said protests, nor at any other time, nor in any other manner, prior to



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the time of filing his claim for refund hereinafter mentioned, did plaintiff assert and claim that the A. Overholt & Co. or West Overton Distilling Company should be treated in any other manner than as partnerships.

22. On or about March 19, 1929, plaintiff filed with the defendant on the form prescribed by the Commissioner of Internal Revenue for that purpose a claim for refund for the year 1920 of \$194,160.75. In said refund claim the said plaintiff assigned the following reasons for the allowance thereof:

In my tax return for 1920 there was included in my income the amounts of \$48,350.74 and \$5,960.55 as operating profits of the partnerships of A. Overholt & Company and West Overton Distilling Co., respectively. The Commissioner of Internal Revenue increased the income reported from these partnerships to \$281,779.95 and \$52,814.28, respectively, and assessed and collected additional taxes thereon. Mr. H. C. Frick, one of the partners, died in 1919. In 1925 the remaining assets of these partnerships were sold and distribution made. The Commissioner of Internal Revenue has determined that these businesses were in liquidation from the death of Mr. Frick on Dec. 3, 1919 and that the remaining partners and the Estate are taxable in 1925 when final liquidation was made and that no profit or loss for any year from 1919 to 1924 resulting from said liquidation should be added to or subtracted from the partners' individual incomes for those years. Ac-

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cordingly the income of the taxpayer for the year 1920 should be reduced by the amounts of \$281,779.95 and \$52,814.29, erroneously included by the Commissioner in income for that year.

23. By letter dated April 16, 1932, the Commissioner of Internal Revenue advised plaintiff that his claim for refund for the year 1920 had been examined and would be rejected on the ground that the operating income of A. Overholt & Co. and the operating income of West Overton Distilling Company were reportable in the year in which the income was realized. Said letter further advised plaintiff that he would be afforded a hearing before the Income Tax Unit at Washington upon written request therefor. Plaintiff, through counsel, was accorded a hearing on or about October 12, 1932, and submitted a brief dated October 11, 1932. Thereafter by letter dated February 27, 1934, addressed to A. W. Mellon, the plaintiff was advised "that your proportionate share of the operating profits" of A. Overholt & Co. and West Overton Distilling Company "was properly reportable on your 1920 return", and that "accordingly, the claim will be disallowed." Plaintiff's refund claim for the year 1920 was disallowed by the Commissioner of Internal Revenue on a schedule dated April 6, 1934, and official notification of such disallowance was made by letter dated April 6, 1934, addressed to A. W. Mellon.

24. If the income of A. Overholt & Co. for the calendar year 1920 had been treated and reported by

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plaintiff and his brother, R. B. Mellon, or had been treated by the Commissioner of Internal Revenue, as the income of a taxable trust, the correct tax liability, exclusive of interest as provided by law, of said trust, would have been \$551,914.70, computed as follows:

Net income (as set out in Paragraph 7	
hereof) .....	\$845,339.86
Less exemption .....	1,000.00
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Net income subject to normal tax .....	\$844,339.86
Normal tax at 4% on \$4,000 . \$	160.00
Normal tax at 8% on \$840,-	
339.86 .....	67,227.19
Surtax on \$845,339.86 .....	484,527.51
	<hr/>
	\$551,914.70

If the income of West Overton Distilling Company for the calendar year 1920 had been treated and reported by plaintiff and R. B. Mellon, or had been treated by the Commissioner of Internal Revenue as the income of a taxable trust, the correct tax liability, exclusive of interest as provided by law, of said trust, would have been \$66,673.42, computed as follows:

Net income (as set out in Paragraph 7	
hereof) .....	\$158,442.84
Less exemption .....	1,000.00
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Net income subject to normal tax .....	\$157,442.84

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Normal tax at 4% on \$4,000 ..\$	160.00
Normal tax at 8% on \$153,-	
442.84 .....	12,275.43
Surtax on \$158,442.84 .....	54,237.99
<hr/>	
Total tax liability .....	\$66,673.42

No such action was taken by plaintiff or R. B. Mellon, and no income taxes for the year 1920 have been levied or paid on the income earned by A. Overholt & Co. in the year 1920 or on the income earned by West Overton Distilling Company in the year 1920 except the amounts involved in this proceeding and in the related action brought by R. B. Mellon.

25. On or prior to December 31, 1925, all of the monies, properties and assets of whatever nature of A. Overholt & Co. were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick, leaving said organizations with no assets or property out of which the aforesaid amount of \$551,914.70 could have been collected. The amount of money together with the value of the property so received by plaintiff in distribution was equal or to in excess of the amount of \$551,914.70.

26. On or prior to December 31, 1925, all of the monies, properties and assets of whatever nature of West Overton Distilling Company were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick, leaving said organizations with no assets or property out of which the aforesaid amount of \$66,-



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673.42 could have been collected. The amount of money together with the value of the property so received by plaintiff in distribution was equal to or in excess of the amount of \$66,673.42.

27. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick, any additional amounts as income taxes on the income for the year 1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

28. The partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

29. The partnerships of A. Overholt & Co. and West Overton Distilling Company, and each of them, were in existence throughout the year 1920.

30. A. Overholt & Co. and West Overton Distilling Company were required to and properly filed partnership returns of income on Form 1065 for the year 1920.

31. A. W. Mellon's distributive share of the net income of the partnership of A. Overholt & Co. for the year 1920 was \$281,779.95.

32. A. W. Mellon's distributive share of the net income of the partnership of West Overton Distilling Company for the year 1920 was \$52,814.28.

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33. In determining the deficiency assessed and collected from A. W. Mellon, the Commissioner of Internal Revenue properly included in A. W. Mellon's taxable income for the year 1920 the sum of \$281,779.-95 as his distributive share of the net income of A. Overholt & Co. for the year 1920.

34. In determining the deficiency assessed and collected from A. W. Mellon, the Commissioner of Internal Revenue properly included in A. W. Mellon's taxable income in the year 1920 the sum of \$52,814.28 as his distributive share of the net income of West Overton Distilling Company for the year 1920.

35. The defendant, the Commissioner of Internal Revenue and the United States relied to their prejudice on A. W. Mellon's original position and representation in respect of the manner and method of reporting the income earned by A. Overholt & Co. in the year 1920 and the income earned by West Overton Distilling Company in the year 1920.

36. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, the Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting any amounts as the income tax liabilities of said organizations for the year 1920.

37. Plaintiff is estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was income from property held in trust.

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38. Plaintiff is estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was income of a taxable trust or trusts.

39. Plaintiff is estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was not distributed or distributable to A. W. Mellon, if such a trust or trusts existed.

40. Plaintiff is estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was not taxable to A. W. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect any amounts as the income tax liabilities of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

41. Plaintiff is estopped to assert and claim that the amounts in controversy in this action were not properly assessed by the Commissioner of Internal Revenue and properly collected by the defendant.

42. Even though the income, on which the taxes in controversy were asserted, assessed and collected, was income of taxable trusts, as a result of the distribution of all the properties and assets of A. Overholt & Co. and West Overton Distilling Company and the receipt by A. W. Mellon in such distribution of money

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and property amounting to in excess of \$600,000, at the time the deficiency involved in this proceeding was determined and assessed by the Commissioner of Internal Revenue, and collected by the defendant, A. W. Mellon was indebted to the United States as a transferee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income thereof for the year 1920 in an amount in excess of the amount collected by the defendant from A. W. Mellon, as hereinbefore set forth.

43. Defendant is not indebted to A. W. Mellon in any sum whatsoever.

Upon the foregoing special findings of fact, which are hereby made a part of the judgment herein, the Court finds and enters the following:

**CONCLUSIONS OF LAW.**

1. Under and pursuant to the provisions of Section 30 of the Pennsylvania Partnership Act, March 26, 1915, P. L. 18 (59 P. S. 92), the partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

2. As a matter of law, the partnerships of A. Overholt & Co. and West Overton Distilling Company continued in existence throughout the year 1920.

3. As a matter of law, A. Overholt & Co. and West Overton Distilling Company were required to file partnership returns of income for the year 1920, in accordance with the provisions of Section 224 of the Revenue Act of 1918.



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4. Under the provisions of Section 218 of the Revenue Act of 1918, A. W. Mellon was taxable upon his distributive share of the net income of each of the partnerships of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

5. The income of a partnership in process of liquidation is taxable for Federal income tax purposes to the individual members thereof in the respective years in which realized, earned, and received by the partnership.

6. There is no warrant in law for postponing the taxation of a partnership in process of liquidation to the year in which the winding up of the affairs of the partnership is completed.

7. There is no warrant in law for the plaintiff's contention that the income of A. Overholt & Co. and West Overton Distilling Company was not taxable until A. W. Mellon had received payments exceeding the cost value of his interest in the partnerships as of December 2, 1919.

8. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick any additional amounts as income taxes on the income for the year 1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

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9. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, was income from property held in trust.

10. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, on which the taxes involved in this action were assessed and collected, was income of a taxable trust or trusts.

11. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. earned during 1920, or the income of West Overton Distilling Company earned during 1920, was not distributed or distributable to A. W. Mellon, if such a trust or trusts existed.

12. Plaintiff is estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, on which the taxes in controversy in this action were assessed and collected, was not taxable to A. W. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect any amounts as the income tax liabilities of said organizations for the year 1920.

13. Plaintiff is estopped to assert and claim that the deficiency asserted, determined and assessed by

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the Commissioner of Internal Revenue against A. W. Mellon for the year 1920, was not lawfully assessed and legally collected.

14. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, then at the time the additional tax for the year 1920, in controversy, was determined, assessed and collected, A. W. Mellon was indebted to the United States as trustee, transferee, or distributee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income thereof for the year 1920 in an amount in excess of the amount of \$202,502.22, collected by the defendant from A. W. Mellon as a deficiency in tax and the interest thereon for the year 1920.

15. In equity and good conscience the plaintiff ought not to recover of and from the defendant herein.

16. The tax sought to be recovered in this action were lawfully assessed by the Commissioner of Internal Revenue and legally collected by the defendant from A. W. Mellon.

17. The pleadings and the evidence in this case, with every inference of fact that may be drawn from it, are insufficient in law to warrant a judgment against this defendant.

18. Under the law and the evidence, the record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiff and against the defendant.

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19. The defendant, on the pleadings and the evidence in this case, is entitled to judgment dismissing plaintiff's Statement of Claim, at plaintiff's costs.

In the event the Court fails or refuses to make, adopt, or enter the foregoing findings of fact and conclusions of law, or any thereof, defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further excepts and prays that he be allowed an exception to any ruling and action of the Court in making and entering any other findings of fact and conclusions of law, or either thereof.

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**Defendant's Motion for Special Findings of Fact and Conclusions of Law.**

(Caption No. 6979 Law.)

Comes now the defendant in the above entitled cause by Horatio S. Dumbauld, United States Attorney for the Western District of Pennsylvania, and D. Lloyd Claycomb, Assistant United States Attorney for said District, his Attorneys, and respectfully moves the Court to make and enter the following specific findings of fact, and to declare and enter the following conclusions of law, to-wit:

**FINDINGS OF FACT.**

1. The praecipe for summons in this action was filed on March 23, 1932, and the Statement of Claim



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herein was filed on October 24, 1933, by R. B. Mellon, a resident of the City of Pittsburgh Allegheny County, Pennsylvania. The said R. B. Mellon died testate on or about December 1, 1933, and the duly qualified executors and executrices of his estate are Jennie King Mellon, Richard King Mellon and Sarah Mellon Scaife, all residents of Pittsburgh, Pennsylvania, and the Union Trust Company of Pittsburgh, a corporation doing business in Pittsburgh, Pennsylvania, all of whom by order of Court have been substituted as parties plaintiff herein.

2. The defendant, D. B. Heiner, was duly appointed United States Collector of Internal Revenue for the Twenty-third Collection District of Pennsylvania on or about the first day of August, 1921, and from and after said date until on or about the thirtieth day of June, 1933, was the duly appointed, qualified, and acting Collector of Internal Revenue for said Twenty-third Collection District of Pennsylvania and a resident of the western judicial district of Pennsylvania.

3. During the year 1920, R. B. Mellon kept his books and records and filed his income tax return for said year on the cash receipts and disbursements method of accounting. On or about the fifteenth day of March, 1921, R. B. Mellon filed with the then Collector of Internal Revenue for said collection district, his Federal income tax return for the calendar year 1920. The tax liability shown on said return was \$406,673.28, which amount was duly assessed and paid.

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4. On or about December 12, 1918, R. B. Mellon, A. W. Mellon, and Henry C. Frick entered into two separate written partnership agreements to trade and do business under the respective names of A. Overholt & Co. and West Overton Distilling Company, each being registered under the Fictitious Names Act of Pennsylvania; true and correct copies of said partnership agreements are attached to the Statement of Claim as Exhibits "A" and "B" and are by reference made a part hereof. In and by said partnership agreements R. B. Mellon, A. W. Mellon, and Henry C. Frick had equal one-third interests in each of said partnerships:

5. On or about January 1, 1919, the property and assets of a corporation bearing the name of A. Overholt & Co. were transferred to the partnership of A. Overholt & Co. At or about the same time the property and assets of a corporation bearing the name of West Overton Distilling Company were transferred to the partnership of West Overton Distilling Company. Included in the properties so received by said partnerships were large amounts of spiritous liquors stored in bonded warehouses.

6. The business of each of the partnerships of A. Overholt & Co. and West Overton Distilling Company consisted primarily of the storage, bottling and casing, and sale of spiritous liquors. The books and records in respect to the businesses and activities of said partnerships, and each of them, were kept by the accrual method of accounting.

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7. Henry C. Frick died on or about December 2, 1919. Thereafter and throughout the year 1920 the business of each of the two partnerships of A. Overholt & Co. and West Overton Distilling Company was actively carried on and continued in exactly the same manner as prior to the death of Henry C. Frick. The net income earned by A. Overholt & Co. during the year 1920 in the ordinary course of business was \$854,339.86, computed in the following manner:

*Gross Income*

Whiskey sales, not less than.....\$928,273.71

Less: January 1, 1920

whiskey inventory.\$794,235.38

December 31, 1920

whiskey inventory 697,307.34    96,928.04

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Gross profit on whiskey

sales ..... 831,345.67

Sales of empty barrels, not

less than ..... 6,609.31

Charges for bottling and

casing, not less than.... 320,533.61

Storage charges, not less

than ..... 42,550.50

Other operating income

not allocated ..... 33,578.67

Interest received ..... 3,480.73

Rents received ..... 300.00

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Total .....

\$1,238,398.49

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*Deductions*

Salaries and wages.....	\$ 39,600.01	
Insurance .....	18,190.00	
Taxes .....	31,132.86	
Storage expense .....	23,446.60	
Bottling expense .....	22,867.98	
Distilling expense .....	46,311.27	
General expense .....	35,912.08	
Expenses of Bradford office	3,519.59	
Cases, bottles, corks, other supplies, and mise.....	166,749.49	
Loss on Liberty Bonds...	5,328.75	
		<hr/>
Total .....		393,058.63

Net income .....\$845,339.86  
The net income earned by West Overton Distilling  
Company during the year 1920 in the ordinary course  
of business was \$158,442.84, computed in the following  
manner:

*Gross Income*

Sales less returns .....	\$218,050.31	
Less: Inventory December		
31, 1919 .....	\$121,135.00	
Inventory December		
31, 1920.....	93,819.44	27,315.56
		<hr/>
Total .....		190,734.75



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*Deductions*

Labor .....	8,188.92
Taxes .....	2,236.44
Depreciation .....	1,739.49
Loss on Liberty Bonds...	507.50
Storage .....	1,211.40
Insurance .....	5,528.16
Other expenses—Bad debts, etc. ....	11,650.00
Salesmen's commissions..	1,230.00
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Total .....	32,291.91
<hr/>	
Net income .....	\$158,442.84

8. During the year 1920 the sum of \$800,000 was distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick by A. Overholt & Co. In connection with such distributions said parties gave to A. Overholt & Co. non-interest bearing notes in the aggregate amount of \$750,000. The amounts so distributed were not intended to be loans from A. Overholt & Co. to said parties. At the time said distributions were made, there was no intention that said parties would pay said notes, and the same were not in fact paid but were returned to the makers thereof in 1925 at the time the property and assets then owned by A. Overholt & Co. and West Overton Distilling Company were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick. Said distributions were in fact distributions of a part of the 1920 income of A.

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Overholt & Co. to said parties. R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick received actual possession of that part of the 1920 income of A. Overholt & Co. represented by said distributions.

9. During the period from December 2, 1919, to and including December 31, 1920, the assets of A. Overholt & Co. and West Overton Distilling Company, including cash, were kept separate and were not commingled with the assets or cash of R. B. Mellon or A. W. Mellon.

10. On or about March 15, 1921, R. B. Mellon executed and caused to be filed with the Collector of Internal Revenue for the Twenty-Third Collection District of Pennsylvania, a partnership return of income for the calendar year 1920 in the name of and for A. Overholt & Co. on official form 1065, the form provided by the Commissioner of Internal Revenue for the making of partnership returns of income. R. B. Mellon therein claimed and reported that A. Overholt & Co. was a partnership and that the income thereof for the year 1920 was distributable and taxable, one-third each, to R. B. Mellon, his brother, A. W. Mellon, and the estate of Henry C. Frick.

11. The said return showed gross income of \$169,649.13, computed in the following manner:

Sales of empty barrels .....	\$ 6,609.31
Bottling and casing .....	320,563.61
Storage .....	42,550.50
Total .....	\$369,693.42
Less: Labor .....	\$12,859.41

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Revenue stamps .....	8,020.90	
Cases, bottles, corks, etc. .	150,922.31	
Water and other expenses. .	10,757.98	
Storage, labor, and exp. . .	21,264.42	203,825.02

Balance .....	\$165,868.40	
Interest .....	3,480.73	
Rentals .....	300.00	

Gross income reported .....\$169,649.13

Deductions of \$19,268.15, together with a loss of \$5,278.75 from the sale of capital assets or investments shown on said return, resulted in the return showing a net income to be accounted for by the parties interested in A. Overholt & Co. of \$145,052.23. \$48,350.74 of said amount was reported on the return as distributable and taxable to R. B. Mellon; \$48,350.74 of said amount was reported on the return as distributable and taxable to A. W. Mellon; and \$48,350.75 of said amount was reported on the return as distributable and taxable to the estate of Henry C. Frick.

12. Although the gross income reported on the return filed for A. Overholt & Co. did not include any amount for profit realized by A. Overholt & Co. on the sale of whiskey, a special schedule attached to said return disclosed that in the year 1920 A. Overholt & Co. realized a profit of \$646,327.63 on the sale of whiskey. Such profit is computed in the following manner:

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Gross sale price of whiskey ....	\$928,273.71
Less: January 1, 1920 whiskey inventory .....	\$595,676.53
December 31, 1920 whiskey inventory .....	498,748.49    96,928.04
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Gross profit on whiskey sales ....	831,345.67
Less: Insurance .....	16,000.00
Taxes .....	3,000.00
Salesmen's salary & commission .....	11,726.00
Storage .....	23,446.60
United States taxes paid.	9,857.70
Distillery labor, expense and maintenance .....	46,791.27
Salaries .....	14,302.03
Bradford office expense ..	1,809.80
Office rent and miscellaneous .....	3,039.02
Adv. and other expense ..	55,047.46
Claim adjustment .....	1.84    185,021.72
<hr/>	
Net profit on whiskey sales ....	\$646,327.63

13. Neither R. B. Mellon, A. W. Mellon, nor both acting jointly, filed, or cause to be filed an income tax return for the year 1920, covering any portion of the income of A. Overholt & Co. on the form prescribed for the making of returns by fiduciaries of a trust.

14. On or about March 15, 1921, R. B. Mellon executed and caused to be filed with the Collector of



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Internal Revenue for the Twenty-Third Collection District of Pennsylvania, a partnership return of income for the calendar year 1920 in the name of and for West Overton Distilling Company on official form 1065, the form provided by the Commissioner of Internal Revenue for the making of partnership returns of income. R. B. Mellon therein claimed and reported that West Overton Distilling Company was a partnership and that the income thereof for the year 1920 was distributable and taxable, one-third each, to R. B. Mellon, his brother, A. W. Mellon, and the estate of Henry C. Frick.

15. Said return showed a gross income of \$27,735.48, computed in the following manner:

Gross sales .....	\$47,729.00	
Cost of goods sold .....	20,127.92	\$27,601.08

Rents received .....		134.40
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Gross income reported .....	\$27,735.48
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Deductions of \$9,853.84 shown on said return resulted in the return showing a net income to be accounted for by the parties interested in West Overton Distilling Company of \$17,881.64. \$5,960.55 of said amount was reported on the return as distributable and taxable to R. B. Mellon; \$5,960.55 of said amount was reported on the return as distributable and taxable to A. W. Mellon; \$5,960.54 of said amount was reported on the return as distributable and taxable to the estate of Henry C. Frick.

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16. Although a gross income of only \$27,735.48 and a net income of only \$17,881.64 was reported on the face of said return, balance sheets attached to said return disclose that during the year 1920 the net assets of West Overton Distilling Company were increased, not by \$17,881.64, but by \$156,539.02, or in the amount of \$138,657.38 in excess of the net income shown on the face of the return.

17. Neither R. B. Mellon, A. W. Mellon, nor both acting jointly, filed, or caused to be filed an income tax return for the year 1920, covering any portion of the income of West Overton Distilling Company on the form prescribed for the making of returns by fiduciaries of a trust.

18. On his Federal income tax return for 1920 R. B. Mellon included \$48,350.74 as income from the partnership of A. Overholt & Co., and included the sum of \$5,960.55 as income from the partnership of West Overton Distilling Company.

19. In the year 1921, the Commissioner of Internal Revenue caused an examination to be made by an Internal Revenue Agent of the partnership returns filed in the name of and for A. Overholt & Co. and West Overton Distilling Company for the year 1920, and the income tax return filed by R. B. Mellon for the year 1920. On December 20, 1922, the Commissioner mailed to R. B. Mellon a preliminary letter showing a deficiency for 1920 of \$174,422.45. On December 16, 1926, the Commissioner mailed to R. B. Mellon a pre-

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liminary letter showing a deficiency for the year 1920 of \$181,298.64. On February 21, 1927, the Commissioner mailed to R. B. Mellon a final deficiency letter showing a deficiency in income tax for the year 1920 of \$175,259.70. On May 5, 1927, said deficiency of \$175,259.70, together with interest in the sum of \$12,527.47, was assessed against R. B. Mellon. Thereafter, on or about May 10, 1927, the defendant notified R. B. Mellon of said assessment. On or about May 19, 1927, R. B. Mellon paid to defendant said sums of \$175,259.70 and \$12,527.47.

20. In examining the partnership return filed in the names of and for A. Overholt & Co. and West Overton Distilling Company, the Internal Revenue Agent and the Commissioner accepted the manner and method of reporting the 1920 income of A. Overholt & Co. and the 1920 income of West Overton Distilling Company, and merely changed the amount of the incomes so reported. The Commissioner increased R. B. Mellon's share of the net income of A. Overholt & Co. for the year 1920 from \$48,350.74 to \$281,779.95, by determining that the net income earned by A. Overholt & Co. during the year 1920 was \$845,339.86 (as set out in Paragraph 7 hereof), and taking one-third of said amount, or \$281,779.95 as R. B. Mellon's share thereof. The Commissioner increased R. B. Mellon's share of the net income of West Overton Distilling Company for the year 1920 from \$5,960.55 to \$52,814.28, by determining that the net income earned by West Over-

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ton Distilling Company during the year 1920 was \$158,442.84 (as set out in Paragraph 7 hereof), and taking one-third of said amount, or \$52,814.28 as R. B. Mellon's share thereof.

21. On or about January 19, 1923, R. B. Mellon filed with the Commissioner a protest against the action set out in the Commissioner's preliminary letter of December 20, 1922. On January 31, 1927, R. B. Mellon filed with the Commissioner a protest against the action set forth in the Commissioner's preliminary letter of December 16, 1926. In neither of said protests, nor at any other time, nor in any other manner, prior to the time of filing his claim for refund hereinafter mentioned, did R. B. Mellon assert and claim that the A. Overholt & Co. or West Overton Distilling Company should be treated in any other manner than as partnerships.

22. On or about March 19, 1929, R. B. Mellon filed with the defendant on the form prescribed by the Commissioner of Internal Revenue for that purpose a claim for refund for the year 1920 of \$187,787.17, to-wit, the aforesaid sum of \$175,259.70 additional tax and \$12,527.47 interest. In said refund claim the said R. B. Mellon assigned the following reasons for the allowance thereof:

In my tax return for 1920 there was included in my income the amounts of \$48,350.74 and \$5,960.55 as operating profits of the partnerships of A. Overholt & Company and West Overton Dis-



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tilling Co., respectively. The Commissioner of Internal Revenue increased the income reported from these partnerships to \$281,779.95 and \$52,814.28, respectively, and assessed and collected additional taxes thereon. Mr. H. C. Frick, one of the partners, died in 1919. In 1925 the remaining assets of these partnerships were sold and distribution made. The Commissioner of Internal Revenue has determined that these businesses were in liquidation from the death of Mr. Frick on Dec. 3, 1919 and that the remaining partners and the Estate are taxable in 1925 when final liquidation was made and that no profit or loss for any year from 1919 to 1924 resulting from said liquidation should be added to or subtracted from the partners individual incomes for these years. Accordingly the income of the taxpayer for the year 1920 should be reduced by the amounts of \$281,779.95 and \$52,814.28, erroneously included by the Commissioner in income for that year.

23. By letter dated April 16, 1932, the Commissioner of Internal Revenue advised R. B. Mellon that his claim for refund for the year 1920 had been examined and would be rejected on the ground that the operating income of A. Overholt & Co. and the operating income of West Overton Distilling Company were reportable in the year in which the income was realized. Said letter further advised R. B. Mellon that he would be afforded a hearing before the Income Tax Unit at Washington upon written request therefor. R.

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B. Mellon, through counsel, was accorded a hearing on or about October 12, 1932, and submitted a brief dated October 11, 1932. Thereafter by letter dated February 27, 1934, addressed to the Estate of R. B. Mellon, the plaintiffs were advised "that Mr. Mellon's proportionate share of the operating profits" of A. Overholt & Co. and West Overton Distilling Company "was properly reportable in his 1920 return", and that "accordingly, the claim will be disallowed." R. B. Mellon's refund claim for the year 1920 was disallowed by the Commissioner of Internal Revenue on a schedule dated April 6, 1934, and official notification of such disallowance was made by letter dated April 6, 1934, addressed to the Estate of R. B. Mellon.

24. If the income of A. Overholt & Co. for the calendar year 1920 had been treated and reported by R. B. Mellon and A. W. Mellon, or had been treated by the Commissioner of Internal Revenue, as the income of a taxable trust, the correct tax liability, exclusive of interest as provided by law, of said trust, would have been \$551,914.70, computed as follows:

Net Income (as set out in Paragraph 7	
hereof) .....	\$845,339.86
Less exemption .....	1,000.00
<hr/>	
Net income subject to normal tax ....	\$844,339.86
Normal tax at 4% on	
\$4,000 .....	\$ 160.00

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Normal tax at 8% on	
\$840,339.86 .....	67,227.19
Surtax on \$845,339.86 ...	484,527.51

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Total tax liability .....\$551,914.70

If the income of West Overton Distilling Company for the calendar year 1920 had been treated and reported by R. B. Mellon and A. W. Mellon, or had been treated by the Commissioner of Internal Revenue as the income of a taxable trust, the correct tax liability, exclusive of interest as provided by law, of said trust, would have been \$66,673.42, computed as follows:

Net income (as set out in Paragraph 7 hereof) .....	\$158,442.84
Less exemption .....	1,000.00

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Net income subject to normal tax ....	\$157,442.84
Normal tax at 4% on	
\$4,000 .....	\$ 160.00
Normal tax at 8% on	
\$153,442.84 .....	12,275.43
Surtax on \$158,442.84 ...	54,237.99

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Total tax liability .....\$66,673.42

No such action was taken by R. B. Mellon or A. W. Mellon, and no income taxes for the year 1920 have been levied or paid on the income earned by A. Overholt & Co. in the year 1920 or on the income earned by

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West Overton Distilling Company in the year 1920 except the amounts involved in this proceeding and in the related action brought by A. W. Mellon.

25. On or prior to December 31, 1925, all of the monies, properties and assets of whatever nature of A. Overholt & Co. were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick, leaving said organizations with no assets or property out of which the aforesaid amount of \$551,914.70 could have been collected. The amount of money together with the value of the property so received by R. B. Mellon in distribution was equal to or in excess of the amount of \$551,914.70.

26. On or prior to December 31, 1925, all of the monies, properties and assets of whatever nature of West Overton Distilling Company were distributed to R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick, leaving said organizations with no assets or property out of which the aforesaid amount of \$66,673.42 could have been collected. The amount of money together with the value of the property so received by R. B. Mellon in distribution was equal to or in excess of the amount of \$66,673.42.

27. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the Estate of Henry C. Frick any additional amounts as income taxes on the income for the year



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1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

28. The partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

29. The partnerships of A. Overholt & Co. and West Overton Distilling Company, and each of them, were in existence throughout the year 1920.

30. A. Overholt & Co. and West Overton Distilling Company were required to and properly filed partnership returns of income on Form 1065 for the year 1920.

31. R. B. Mellon's distributive share of the net income of the partnership of A. Overholt & Co. for the year 1920 was \$281,779.95.

32. R. B. Mellon's distributive share of the net income of the partnership of West Overton Distilling Company for the year 1920 was \$52,814.28.

33. In determining the deficiency assessed and collected from R. B. Mellon, the Commissioner of Internal Revenue properly included in R. B. Mellon's taxable income for the year 1920 the sum of \$281,779.95 as his distributive share of the net income of A. Overholt & Co. for the year 1920.

34. In determining the deficiency assessed and collected from R. B. Mellon, the Commissioner of Internal Revenue properly included in R. B. Mellon's

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taxable income in the year 1920 the sum of \$52,814.28 as his distributive share of the net income of West Overton Distilling Company for the year 1920.

35. The defendant, the Commissioner of Internal Revenue and the United States relied to their prejudice on R. B. Mellon's original position and representation in respect of the manner and method of reporting the income earned by A. Overholt & Co. in the year 1920 and the income earned by West Overton Distilling Company in the year 1920.

36. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, the Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting any amounts as the income tax liabilities of said organizations for the year 1920.

37. Plaintiffs are estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was income from property held in trust.

38. Plaintiffs are estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was income of a taxable trust or trusts.

39. Plaintiffs are estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected

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was not distributed or distributable to R. B. Mellon, if such a trust or trusts existed.

40. Plaintiffs are estopped to assert and claim that any portion of the income on which the taxes in controversy in this action were assessed and collected was not taxable to R. B. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect any amounts as the income tax liabilities of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

41. Plaintiffs are estopped to assert and claim that the amounts in controversy in this action were not properly assessed by the Commissioner of Internal Revenue and properly collected by the defendant.

42. Even though the income on which the taxes in controversy were asserted, assessed and collected was income of taxable trusts, as a result of the distribution of all the properties and assets of A. Overholt & Co. and West Overton Distilling Company and the receipt by R. B. Mellon in such distribution of money and property amounting to in excess of \$600,000, at the time the deficiency involved in this proceeding was determined and assessed by the Commissioner of Internal Revenue, and collected by the defendant, R. B. Mellon was indebted to the United States as a transferee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income

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thereof for the year 1920 in an amount in excess of the amount collected by the defendant from R. B. Mellon as hereinbefore set forth.

43. Defendant is not indebted to R. B. Mellon, or any or all of the plaintiffs, or either of them, in any sum whatsoever.

Upon the foregoing special findings of fact, which are hereby made a part of the judgment herein, the Court finds and enters the following:

**CONCLUSIONS OF LAW.**

1. Under and pursuant to the provisions of Section 30 of the Pennsylvania Partnership Act, March 26, 1915, P. L. 18 (59 P. S. 92), the partnerships of A. Overholt & Co. and West Overton Distilling Company were not terminated by the death of Henry C. Frick.

2. As a matter of law, the partnerships of A. Overholt & Co. and West Overton Distilling Company continued in existence throughout the year 1920.

3. As a matter of law, A. Overholt & Co. and West Overton Distilling Company were required to file partnership returns of income for the year 1920, in accordance with the provisions of Section 224 of the Revenue Act of 1918.

4. Under the provisions of Section 218 of the Revenue Act of 1918, R. B. Mellon was taxable upon his distributive share of the net income of each of the



*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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partnerships of A. Overholt & Co. and West Overton Distilling Company for the year 1920.

5. The income of a partnership in process of liquidation is taxable for Federal income tax purposes to the individual members thereof in the respective years in which realized, earned, and received by the partnership.

6. There is no warrant in law for postponing the taxation of a partnership in process of liquidation to the year in which the winding up of the affairs of the partnership is completed.

7. There is no warrant in law for the plaintiffs' contention that the income of A. Overholt & Co. and West Overton Distilling Company was not taxable until R. B. Mellon had received payments exceeding the cost value of his interest in the partnerships as of December 2, 1919.

8. The Commissioner of Internal Revenue and the United States are now precluded from assessing and collecting from A. Overholt & Co., West Overton Distilling Company, the estate of R. B. Mellon, A. W. Mellon, and the estate of Henry C. Frick any additional amounts as income taxes on the income for the year 1920 of A. Overholt & Co. and the income for 1920 of West Overton Distilling Company.

9. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and

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West Overton Distilling Company, or either of them, earned during 1920, was income from property held in trust.

10. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, on which the taxes involved in this action were assessed and collected, was income of a taxable trust or trusts.

11. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. earned during 1920, or the income of West Overton Distilling Company earned during 1920, was not distributed or distributable to R. B. Mellon, if such a trust or trusts existed.

12. Plaintiffs are estopped to assert and claim that any portion of the income of A. Overholt & Co. and West Overton Distilling Company, or either of them, earned during 1920, on which the taxes in controversy in this action were assessed and collected, was not taxable to R. B. Mellon while receiving the benefit resulting from the inability of the Commissioner of Internal Revenue and the United States to assess and collect any amounts as the income-tax liabilities of said organizations for the year 1920.

13. Plaintiffs are estopped to assert and claim that the deficiency asserted, determined and assessed by the Commissioner of Internal Revenue against R.

*Bill of Exceptions—Defendant's Motion for Special Findings of Fact and Conclusions of Law.*

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B. Mellon for the year 1920, was not lawfully assessed and legally collected.

14. If A. Overholt & Co. and West Overton Distilling Company were taxable trusts in 1920, then at the time the additional tax for the year 1920, in controversy was determined, assessed and collected, R. B. Mellon was indebted to the United States as trustee, transferee, or distributee of the assets of A. Overholt & Co. and West Overton Distilling Company in respect of income taxes on the income thereof for the year 1920 in an amount in excess of the amount of \$187,787.17, collected by the defendant from R. B. Mellon as a deficiency in tax and interest thereon for the year 1920.

15. In equity and good conscience the plaintiffs ought not to recover of and from the defendant herein.

16. The taxes sought to be recovered in this action were lawfully assessed by the Commissioner of Internal Revenue and legally collected by the defendant from R. B. Mellon.

17. The pleadings, and the evidence in this case, with every inference of fact that may be drawn from it, are insufficient in law to warrant a judgment against this defendant.

18. Under the law and the evidence, the record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiffs and against the defendant.

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19. The defendant, on the pleadings and the evidence in this case, is entitled to judgment dismissing plaintiffs' statement of claim, at plaintiffs' costs.

In the event the Court fails or refuses to make, adopt, or enter the foregoing findings of fact and conclusions of law, or any thereof, defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further excepts and prays that he be allowed an exception to any ruling and action of the Court in making and entering any other findings of fact and conclusions of law, or either thereof.

Thereupon counsel for plaintiffs and defendant presented their oral arguments to the Court, upon conclusion of which arguments leave was granted to file written briefs on submission of the cases.

Each of said parties thereafter on or about December 10, 1934, timely filed their written briefs.

Thereupon, on December 10, 1934, plaintiffs in said consolidated causes filed their written request for findings of fact and conclusions of law in words and figures as follows:

**Request for Findings of Fact and  
Conclusions of Law.**

(Captions—Nos. 6980 and 6979 Law.)

AND Now, December 10, 1934, come plaintiffs, by their attorneys, and respectfully request the Court to



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make the following findings of fact and conclusions of law in the above-entitled cases:

FINDINGS OF FACT.

1. Mr. A. W. Mellon and Mr. R. B. Mellon filed separate individual income tax returns for the calendar year 1920 and duly paid to the Collector the amounts of taxes shown thereon to be due. Plaintiffs at all times here material kept their books and filed their income tax returns on the cash receipts and disbursements basis of accounting.

2. By letters dated February 21, 1927, the Commissioner of Internal Revenue (hereinafter called the "Commissioner") notified plaintiffs that an examination of said returns and of plaintiffs' books of accounts and records for the year 1920 disclosed deficiencies in the amounts of \$190,419.70 and \$175,259.70, respectively. Thereafter the Commissioner assessed the proposed deficiencies, and on demand from the defendant, the deficiencies, together with interest, were paid as follows: \$190,419.70 tax and \$12,082.50 interest by Mr. A. W. Mellon on April 2, 1927, and \$175,259.70 tax and \$12,527.47 interest by Mr. R. B. Mellon on May 19, 1927.

3. The additional tax so assessed for the year 1920 was the result of the action of the Commissioner adding to the plaintiffs' income, profit alleged to have been realized in the year 1920 from the sale of whiskey certificates by A. Overholt & Company and West Over-

*Bill of Exceptions—Request for Findings of Fact  
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ton Distilling Company, two partnerships in process of liquidation.

4. Prior to December 12, 1918, the two distilleries were owned and operated by two separate corporations, to-wit, A. Overholt & Company and West Overton Distilling Company. The manufacture of whiskey was discontinued in December, 1916. In December, 1917, Congress submitted the Eighteenth Amendment to the states for ratification. In November, 1918, Congress passed the Wartime Prohibition Act, effective July 1, 1919. On January 16, 1919, the requisite number of states had ratified the Eighteenth Amendment effective January 16, 1920.

5. In the fall of 1917 the stockholders of the two corporations decided to liquidate the businesses, and on December 12, 1918, they formed two partnerships under the same names as the corporations to take over and liquidate the assets, businesses and affairs of the two corporations. The partners were A. W. Mellon, R. B. Mellon and H. C. Frick, their interests being equal. The partnership agreements provided that "In case of the dissolution of the firm by death of one or more of the partners, the remaining member or members shall have full power and authority to appoint such person or persons (including incorporated companies) as liquidating agent, with such power and authority to wind up and liquidate the affairs of said partnership as to such surviving partner or partners shall seem advisable."

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6. Mr. H. C. Frick died on December 2, 1919. No new partnership agreements were entered into by the two surviving partners, nor since then have any partnership agreements ever existed between the surviving partners or between the surviving partners and the personal representatives of the deceased partner relative to the businesses of the former partnerships.

7. After the discontinuance of the manufacture of whiskey in December, 1916, no distilling operations were ever carried on and no distiller's license or permit was applied for or granted. All sales of assets of the former partnerships were made under the then existing laws, both Federal and State, relating to the sale and transportation of distilled spirits or intoxicating liquors. The whiskey then in storage was sold on certificate and only withdrawn on application to and permit from the Federal Government. As a necessary part of the sale on certificate, the whiskey was bottled at the distilleries. Whiskey was sold on certificate until the end of 1920 at which time the surviving partners decided not to sell unless they could sell all the partnerships' assets including the balance of the whiskey to some one person or concern. From 1921 until 1925 negotiations were had with several parties relating to sale of the distilleries and whiskey in bulk, and the distilleries and whiskey were finally sold as a unit in the year 1925.

8. On January 1, 1920, A. Overholt & Company had accounts payable of \$192,610.85 and on December

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31, 1920, of \$9,370.06. During the year 1920 the Commissioner claimed additional income taxes from the two corporations for the years 1916, 1917 and 1918 in the amount of about \$550,000.00, which were finally settled on December 28, 1928, and for which the assets of the former partnerships were liable.

9. Mr. R. B. Mellon, as managing partner of the surviving partners of both partnerships, was advised by counsel that no distribution could be made in 1920 until certain questions had been settled, to-wit, the possibility of a floor tax being levied by the Government, the possibility of being required to remove the whiskey to a Government warehouse and the possibility of being required to bottle the whiskey then in storage in barrels, and the immediate imposition of the Internal Revenue tax on such bottling, together with the additional expense involved in bottling. If any of these matters or policies had been adopted by the Government, the surviving partners would have been required to spend large sums of money.

10. No distribution of any profits or of any return of capital was made by the surviving partners or by the liquidating agent to the surviving partners as individuals or to the estate of the deceased partner during the year 1920 or during any subsequent year until after final liquidation in 1925.

11. Plaintiffs, while liquidating the businesses of the two former partnerships, kept the assets of the said



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former partnerships, including cash, separately, treating the same as trust properties, and did not include such assets or cash with their own assets or cash. The books and records of the two former partnerships were kept on the accrual basis of accounting.

12. Loans were made to the surviving partners prior to 1920, during 1920, and to the surviving partners and the estate of the deceased partner after 1920, all of which were finally paid back either prior to or upon final liquidation.

13. The liquidation of the two distilleries was finally consummated, and distribution was made by the said liquidating agent to the surviving partners and the estate of the deceased partner in the year 1925.

14. The alleged profit for 1920, as computed and taxed by the Commissioner, did not exceed the cost basis of the former partner's interest in the partnership.

15. On January 31, 1921, the surviving partners appointed The Union Trust Company of Pittsburgh as liquidating agent, and the liquidating agent continued the liquidation of the businesses in the same manner except that no sales of whiskey were thereafter made until 1925 when all assets including distilleries were sold.

16. In the year 1920 the surviving partners realized profits from bottling, storage and sale of barrels.

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This profit was reported for income tax purposes on a return of income designated "Partnership and Personal Service Corporation Return of Income," form 1065, and the returns disclosed the share of such profit of the two surviving partners and of the estate of the deceased partner but did not state whether such share was distributable, distributed or not. Each of said returns also disclosed a computed profit on the sale of whiskey certificates which was not reported as income but claimed to be the conversion of capital assets and not taxable until the proceeds exceed the cost basis of the former partners' interests.

17. On the individual income tax returns for 1920 filed by plaintiffs, each plaintiff took up and reported as income his so-called share, whether distributed or not, of the net income of A. Overholt & Company and West Overton Distilling Company, as shown upon the aforesaid returns of said former partnerships but they did not take up any of the proceeds from the sale of whiskey certificates.

18. Plaintiffs duly filed separate individual income tax returns for the years 1921 to 1925, both inclusive, and reported their share of the so-called profits or losses of the liquidating agent of the partnerships of A. Overholt & Company and West Overton Distilling Company and each paid the tax on the profit so reported.

19. After the Commissioner had collected the aforesaid additional tax for the year 1920, assessed by

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him on the sales of whiskey certificates in that year, to-wit, in April and May, 1927, he, on or about November 14, 1928, reversed his position and held that the liquidation of the two companies was consummated in 1925 and the profit and losses reported by plaintiffs on their returns for 1924 from the liquidation of A. Overholt & Company and West Overton Distilling Company should be eliminated.

20. The Commissioner in examining the income tax returns filed by plaintiffs for the year 1925 included in income for that year the differences between the cost values of said partnerships as of December 2, 1919, and the amounts received in final liquidation, including the so-called profits and losses for the years 1920 to 1924, inclusive. The amounts actually received in liquidation in the year 1925 as determined by the Commissioner, included the so-called profits and losses of the liquidating agent for all said years, including the year 1920, which had already been taxed by the Commissioner as income for that year.

21. In his final deficiency letters to plaintiffs, dated March 15, 1929, covering the year 1925, the Commissioner notified plaintiffs that deficiencies would be assessed unless appeals were taken to the United States Board of Tax Appeals within sixty days. Plaintiffs took no appeals and the deficiencies were assessed and payments were duly made. The deficiencies arose by virtue of the Commissioner's action in determining a profit on the liquidation of the said partnerships of

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A. Overholt & Company and West Overton Distilling Company in excess of that reported. He eliminated from ordinary income the so-called current profits for the year 1925 reported by plaintiffs on their tax returns from the liquidation of said partnerships, and included as capital gain the entire net profit on the liquidation, including the so-called profit for the year 1920 upon which the additional assessment for that year was based, giving the following explanation: "Profit reported on the liquidation of A. Overholt & Company and West Overton Distilling Company has been eliminated as it is held that the profit on the liquidation of the above companies is capital net gain."

22. The Commissioner determined and settled the Federal tax liability of the Estate of Henry C. Frick, the deceased partner, for the years 1920 and 1925 by holding that the so-called profits of A. Overholt & Company and West Overton Distilling Company for the year 1920 did not constitute taxable income in that year, but did constitute taxable income in the year 1925, the year in which final distribution in liquidation was made, and the estate of the deceased partner paid the tax on that basis.

23. This settlement of the tax liability of the Estate of Henry C. Frick was first discussed in a letter from the Bureau of Internal Revenue, dated December 14, 1927, and was finally made in 1928.

24. The contents of the said letter were communicated to W. A. Seifert, Esq., as attorney for the sur-



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viving partners, and he stated to counsel for the Frick Estate that the same settlement would be satisfactory to them, and the conferees of the Bureau of Internal Revenue in Washington were so advised.

25. On or about March 19, 1929, plaintiff, A. W. Mellon, filed with defendant claim for refund of \$194,160.75 or such greater amount as is legally refundable, and plaintiff, R. B. Mellon, filed with defendant claim for refund of \$187,787.17, or such greater amount as is legally refundable. The claims for refund were not filed until after the Commissioner issued his final deficiency letter for the year 1925 (March 15, 1929).

26. More than two years after the filing of the claims for refund, the Commissioner again reversed his position, and as to the year 1924, included in the tax computation of the plaintiffs the profits and losses realized on the liquidation of A. Overholt & Company and West Overton Distilling Company.

*Facts with Respect to Estoppel.*

27. A return of income for the year 1920 by A. Overholt & Company and for West Overton Distilling Company was duly filed by Richard B. Mellon, one of the surviving partners, on or about March 15, 1921, on form 1065, Partnership and Personal Service Corporation Return of Income. No return of income was filed for either A. Overholt & Company or West Overton Distilling Company for the year 1920 on the form prescribed for the making of returns by fiduciaries of a trust.

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28. Both fiduciary and partnership forms of return serve the same purpose. They are returns of income which disclose the specific items of income and of deductions and the distributable or non-distributable income.

29. After the death of Mr. Frick there was no change in the manner of liquidating the businesses. The fact that the partnerships were in liquidation was made known to the Commissioner on the returns of income filed for A. Overholt & Company and for West Overton Distilling Company for the year 1920. The returns for both former partnerships and of both plaintiffs were examined and the books of accounts and the records audited at the same time by the same Revenue Agent, Albert W. Smith, and his reports on all four returns are dated November 8, 1921. These reports on the former partnerships refer to each other. The return filed by A. Overholt & Company leaves blank the answer to the questions stated on the first sheet, to-wit, "Kind of business," and "State whether Partnership or Corporation." It is signed on the first page by Richard B. Mellon, who is designated "Member of Partnership." On the second page, in answer to question 3 (b), it is stated in large type that it is a "partnership in liquidation," and on a special schedule, attached thereto, it is stated:

"The partnership of A. Overholt & Co., consisted of A. W. Mellon, R. B. Mellon and Henry C. Frick and was created on December 30, 1918,

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for the purpose of liquidating the assets of A. Overholt & Co., a Pennsylvania Corporation.

“Mr. Frick died on December 4, 1919, and, under the laws of the State of Pennsylvania, Messrs. A. W. and R. B. Mellon were, as surviving partners, required to carry on the liquidation of the assets of the copartnership.

“On February 1, 1921, Messrs. Mellon, as liquidating partners, transferred all of the assets, real, personal and mixed of the copartnership, to The Union Trust Company of Pittsburgh, as liquidating agent.”

30. The return of West Overton Distilling Company states, in answer to Question 3 (b), that it is “in liquidation.”

31. The Revenue Agent’s report on A. Overholt & Company for 1920 states:

“The taxpayer has set aside a portion of profits under the caption of liquidation, claiming that this is to apply as a return of capital. Taxpayer agrees to waive this claim provided the Government agrees to settle on the basis of this report.”

32. The Revenue Agent’s report on West Overton Distilling Company for the year 1920 states:

“The Liquidating Profit set aside in 1920 was disallowed and the taxpayer has agreed to this on the condition that the Government accepts the whole report as amended here for the years 1918,

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1919 and 1920 and agrees to definitely settle on this basis—I recommend that the Department close the case.”

33. The Commissioner did not agree to settle on the basis of the Revenue Agent's report and disallowed the deduction for obsolescence of goodwill not claimed on the return but claimed at time of examination and allowed by the Revenue Agent. He increased the profit from the liquidation of the two former partnerships by including therein an alleged profit on the sale of whiskey certificates which he alleged was realized and taxable in 1920.

34. In none of the protests or briefs offered in evidence by defendant as being submitted by plaintiffs to the proposed increase in the net taxable income of either A. Overholt & Company or West Overton Distilling Company with respect to tax liability for the year 1920, to-wit,

Appeals executed January 19, 1923,

Protests executed January 29, 1927,

Memorandum briefs executed February 11, 1927,

nor with respect to the tax liability for the year 1925, to-wit,

Protest and brief executed June 21, 1928, did plaintiffs raise the legal point that the partnerships had been dissolved by the death of Mr. Frick and that the surviving partners became as a matter of law liquidating trustees and, as such, taxable as a



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separate entity. It was raised in the claims for refund filed March 19, 1929, and in a brief filed on November 22, 1932, and then only after the Commissioner had refused to act upon the claims for refund for 1925, which were filed as a protective measure. There is no evidence that no other briefs or protests were filed or that the issue was not raised at any conference.

35. There was no concealment or misrepresentation of any fact with respect to the death of Mr. Frick or to the fact that the partnerships were in the process of liquidation, but these facts were stated affirmatively in the partnership returns. The Commissioner knew of Mr. Frick's death and made a settlement with his executors on a basis which differed from his assessments against the other partners.

36. The Commissioner's inconsistent determinations with respect to the net income of A. Overholt & Company and West Overton Distilling Company during the period of liquidation are respectively set forth as follows:

1. All profit, whether from bottling or otherwise, was taxable income in 1920. (R. A. R. letters of Feb. 9, 1922.)
2. No profit, whether from bottling or otherwise, was realized until final liquidation. (Letter of September 14, 1927.)
3. No profit, whether from bottling or otherwise, was realized until final liquidation. (Letter of November 14, 1928.)

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4. All profit was realized from final liquidation. (Notice of Deficiency for 1925, March 15, 1929.)
5. Profit on sale of whiskey was realized and taxable in 1920. (Letters dated April 16, 1932; letters dated February 27, 1934; letters dated April 6, 1934.)

37. The Commissioner did not reverse his determination that all profit was realized and taxable upon final liquidation in 1925 until after the praecipes for summons had been issued in the instant cases, nor did he actually disallow the claims for refund until approximately two years after the filing thereof and after the statements of claim had been filed in the instant cases.

38. If any taxable income was realized by said trusts for A. Overholt & Company in the year 1920 from bottling, storage and sale of barrels, the amount thereof was  $(\$48,350.74 \times 3)$  \$145,052.22 and from the sale of whiskey certificates the amount thereof was  $(\$233,429.21 \times 3)$  \$700,287.63, and for West Overton Distilling Company was  $(\$5,960.55 \times 3)$  \$17,881.65 and  $(\$52,814.28 \times 3)$  \$158,442.84, respectively.

*Facts with Respect to Third Defense.*

39. On or prior to December 31, 1925, all of the moneys, properties and assets of whatever nature of A. Overholt & Company and West Overton Distilling Company were distributed to plaintiffs and the Estate of H. C. Frick, leaving said organizations with no as-

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sets or property. The amount of money, together with the value of property so received by each plaintiff in distribution from A. Overholt & Company was in excess of \$551,914.70 and from West Overton Distilling Company was in excess of \$66,673.42.

40. Distribution was made prior to the date of the additional assessments for both 1920 and 1925.

41. The United States has already collected a tax on the alleged profit for 1920 upon distribution in final liquidation in 1925.

**CONCLUSIONS OF LAW.**

1. No taxable gain is realized during the liquidation of a partnership dissolved by the death of a former partner, until the proceeds realized exceed the cost bases to the former partners of their partnership interests. \*

2. The assets of a partnership which ordinarily might be considered stock in trade of a going business become capital assets when the partnership is dissolved by the death of a partner and the partnership interests are in process of liquidation.

3. On the sale of such capital assets by such partnership in liquidation, profits may not be computed and taxed prior to final liquidation.

4. Plaintiffs are entitled to recover for the full amount of their claims, together with interest according to law.

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If conclusions of law 1, 2, 3 and 4 are answered in the negative, then as an alternative plaintiffs' request the Court to make the following conclusions of law:

5. The surviving partners of a partnership dissolved by the death of one of the partners are liquidating trustees and taxable as a separate entity.

6. If the surviving partners, as liquidating trustees, were taxable as trusts, the Commissioner and the United States are not precluded from assessing and collecting a tax on the income, if any, realized by the said trusts.

7. The surviving partners, as individuals, are not estopped to assert that, as a matter of law, the tax paid by them as individuals should have been paid by the liquidating trustees, a separate taxable entity.

8. The doctrine of estoppel cannot be invoked by the defendant as there has been no concealment or misrepresentation of any material fact and there has been full disclosure by plaintiffs of the facts upon which the question of law now raised by plaintiffs could at any time have been decided.

9. The doctrine of estoppel cannot be invoked by defendant as the mistake, if any, was one of law.

10. The collection of any tax for the year 1920 from plaintiffs as transferees of the assets of the two former partnerships is barred by the statute of limitations.



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11. Under the facts in these cases the plaintiffs are not barred from recovery by any doctrine in the nature of recoupment.

12. Neither estoppel nor recoupment can be invoked by defendant as it was at all times in possession of the facts necessary to a correct legal determination of tax liability.

13. Neither estoppel nor recoupment can be invoked by the Government as it has collected a tax from plaintiffs on the same income in two different years, has not made a tender of the return of the tax for either year, and as it has shifted from one legal position to another and back again to the detriment of the plaintiffs.

14. Plaintiffs are entitled to recover for the full amount of the claims, together with interest according to law.

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Thereafter and on the 17th day of February, 1936, the Court filed its special findings of fact, conclusions of law and memorandum opinion in each of said cases herein, deciding in favor of the plaintiffs and against the defendant, and thereupon, on said date, entered orders that judgments be entered in favor of plaintiffs for the amounts claimed by them, respectively, with interest according to law; and thereupon, on said date, entered its orders overruling and denying defendant's motions for judgments as to each specific ground there-

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in contained and allowed timely exceptions as made to each ground thereof.

At the bottom of each of defendant's said motions for judgment appears the following endorsement by the Court:

And now, to wit, February 17, 1936, motion denied.

(Signed) *Per Curiam*,

G.

And now, to wit, February 17, 1936, at the request of the United States Attorney, exception is noted to the foregoing order and bill sealed.

(Signed) R. M. GIBSON, (SEAL)  
*District Judge.*

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Thereupon, on said 17th day of February, 1936, the Court entered its orders herein specifically making and finding its separately numbered findings of fact and conclusions of law in each of said causes, respectively, and allowed defendant timely exceptions as made to each and every of the special findings of fact and each and every of the conclusions of law so adopted in each of said causes made and contained in said orders of the Court, and allowing defendant timely exceptions to the orders for judgment against defendant in each of said cases, all of which said findings of fact and conclusions of law of the Court, in each of said causes, are incorporated herein and made parts hereof by refer-

*Bill of Exceptions—Order.*

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ence of the same as if fully set out, even though printed elsewhere in the transcript of record as parts of the strict or primary record on appeal.

Thereupon, and on said 17th day of February, 1936, judgments were entered in favor of plaintiffs in each of said causes in accordance with said orders for judgment and findings of fact and conclusions of law entered and adopted as aforesaid, over the objections and subject to the exceptions of defendant.

And thereupon, on said 17th day of February, 1936, the Court entered its orders rejecting and overruling each and every of defendant's requests for findings of fact numbered 1, and 3 to 43, both inclusive, in each of said causes respectively, and allowed defendant timely exceptions as made to the refusal of the Court to make and enter each specific finding of fact and each specific conclusion of law so requested by defendant in each of said causes.

At the bottom of defendant's said motions for special findings of fact and conclusions of law appear the following endorsements by the Court:

(Caption No. 6980 Law.)

And now, to wit, February 17, 1936, motion denied except as to such findings as appear in findings by the court filed with opinion.

(Signed) *Per Curiam*,

G.

*Bill of Exceptions—Order.*

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And now, to wit, February 17, 1936, at the request of the United States Attorney, exception is noted to the foregoing order and bill sealed.

(Signed) R. M. GIBSON, (SEAL)  
*District Judge.*

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(Caption No. 6979 Law.)

And now, to wit, February 17, 1936, motion refused except as to such findings as appear in findings of fact by the court filed with opinion.

(Signed) *Per Curiam,*

G.

And now, to wit, February 17, 1936, at the request of the United States Attorney, exception is noted to the foregoing order and bill sealed.

(Signed) R. M. GIBSON, (SEAL)  
*District Judge.*

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Thereafter and on April 16, 1936, upon written motion of defendant, consented to in writing by counsel for plaintiffs, the Court made and entered its timely orders extending the term of this Court, and the time for signing, allowance and filing of defendant's bill of exceptions in each of said causes, to July 1, 1936, which said orders are in words and figures as follows:

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ORDER.

(Caption No. 6980 Law.)

ORDERED, ADJUDGED AND DECREED, that the time for the signing, allowance and filing of the

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*Bill of Exceptions—Order.*

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bill of exceptions of defendant is hereby extended to July 1, 1936 and it is further ordered that the present term of this Court be and the same hereby is, extended for said purpose until the expiration of said extended term.

(Signed) R. M. GIBSON,  
*District Judge.*

Dated, April 16, 1936.

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ORDER.

(Caption No. 6979 Law.)

ORDERED, ADJUDGED AND DECREED, that the time for the signing, allowance and filing of the bill of exceptions of defendant is hereby extended to July 1, 1936 and it is further ordered that the present term of this Court be and the same hereby is, extended for said purpose until the expiration of said extended term.

(Signed) R. M. GIBSON,  
*District Judge.*

Dated, April 16, 1936.

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Thereafter and on June 10, 1936, the plaintiffs and defendant, by their respective counsel, entered into a written stipulation, in each of said causes, whereby it was agreed that the time of defendant-appellant for docketing and filing his transcript of record on appeal

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may be extended to July 10, 1936, whereupon, on June 10, 1936, the Court, for good cause shown, timely made and entered the following orders:

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ORDER.

(Caption No. 6980 Law.)

In accordance with the foregoing stipulation the time for filing the record in this case in the Circuit Court of Appeals pursuant to the appeal sued out, is extended until the tenth day of July, 1936.

(Signed) R. M. GIBSON,  
*Judge.*

Dated: This 10th day of June, 1936.

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ORDER.

(Caption No. 6979 Law.)

In accordance with the foregoing stipulation the time for filing the record in this case in the Circuit Court of Appeals pursuant to the appeal sued out, is extended until the tenth day of July, 1936.

(Signed) R. M. GIBSON,  
*Judge.*

Dated: This 10th day of June, 1936.

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*Bill of Exceptions—Stipulation.*

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Thereafter and on June 20, 1936, plaintiffs and defendant, through their respective counsel, entered in to and duly filed written stipulations in each of said causes, agreeing to a further enlargement of the time to August 1, 1936, for signing, allowance and filing of defendant's bill of exceptions, and to August 10, 1936, for defendant-appellant to file transcripts of record on appeal, which stipulations are in words and figures as follows:

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STIPULATION.

(Caption No. 6980 Law.)

It is stipulated and agreed by and between the attorneys for the respective parties herein that the time for the signing, allowance and filing of the bill of exceptions of defendant may be extended to August 1, 1936; and that the time of the appellant to file a transcript of the record on appeal may be extended to August 10, 1936.

(Signed) REED, SMITH, SHAW & McCLAY,

(Signed) WILLIAM WALLACE BOOTH,

*Attorneys for the Plaintiff.*

(Signed) CHARLES F. UHL,

*United States Attorney for the*

*Western District of Pennsylvania.*

(Signed) ORRIS BENNETT,

*Special Assistant to the U. S. Attorney.*

*Attorneys for the Defendant.*

---

*Bill of Exceptions—Stipulation.*

---

STIPULATION.

(Caption No. 6979 Law)

It is stipulated and agreed by and between the attorneys for the respective parties herein that the time for the signing, allowance and filing of the bill of exceptions of defendant may be extended to August 1, 1936, and that the time of the appellant to file a transcript of the record on appeal may be extended to August 10, 1936.

(Signed) REED, SMITH, SHAW & McCLAY.

(Signed) WILLIAM WALLACE BOOTH,

*Attorneys for the Plaintiffs.*

(Signed) CHARLES F. UHL,

*United States Attorney for the Western  
District of Pennsylvania.*

(Signed) ORRIS BENNETT,

*Special Assistant to the U. S. Attorney.*

*Attorneys for the Defendant.*

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Thereupon and on June 20, 1936, the Court made and entered its timely orders further extending the term of Court (theretofore extended by order to July 1, 1936) in each of said causes, to August 1, 1936, for the signing, allowance and filing of defendant's bill of exceptions and to August 10, 1936, for the filing of the transcripts of record on appeal, which said orders are in words and figures as follows:

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*Bill of Exceptions—Order.*

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**ORDER.**

(Caption No. 6980 Law)

In accordance with the foregoing stipulation, it is ordered, adjudged and decreed that the time for the signing, allowance and filing of the bill of exceptions of defendant be and the same hereby is, extended to August 1, 1936, and that the prior term of this court (heretofore extended by order to July 1, 1936) be and the same hereby is, extended for said purpose until the expiration of said extended time.

It is further ordered that the time for the filing of the record in this case in the Circuit Court of Appeals pursuant to the appeal sued out (said time heretofore having been extended to July 10, 1936) be and the same hereby is, extended until the tenth day of August, 1936.

Dated this 20 day of June, 1936.

(Signed) R. M. GIBSON,  
*Judge.*

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**ORDER.**

(Caption No. 6979 Law)

In accordance with the foregoing stipulation, it is ordered, adjudged and decreed that the time for the signing, allowance and filing of the bill of exceptions of defendant be and the same hereby is, extended for said purpose until the expiration of said extended time.

*Bill of Exceptions—Stipulation.*

---

It is further ordered that the time for the filing of the record in this case in the Circuit Court of Appeals pursuant to the appeal sued out (said time heretofore having been extended to July 10, 1936) be and the same hereby is, extended until the tenth day of August, 1936.

Dated this 20 day of June, 1936.

(Signed) R. M. GIBSON,  
*Judge.*

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Thereafter, and on June 20, 1936, plaintiffs and defendant, by their respective counsel, made and entered into a written stipulation, agreeing that each of the above causes be consolidated for all purposes of appeal, which said stipulation was duly entitled and filed in said causes, and is in words and figures as follows:

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STIPULATION.

(Captions Nos. 6980 and 6979 Law)

It is stipulated and agreed by the attorneys for the respective parties that the two above-entitled actions may be consolidated for all purposes of appeal, that one bill of exceptions shall be sufficient for both cases, and that the records on appeal in these cases may be consolidated, printed

*Bill of Exceptions—Order.*

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and filed as one record, and that the Court may enter an order accordingly.

(Signed) REED, SMITH, SHAW & McCLAY,

(Signed) WILLIAM WALLACE BOOTH,

*Attorneys for the Plaintiffs.*

(Signed) CHARLES F. UHL,

*United States Attorney for the Western  
District of Pennsylvania.*

(Signed) ORRIS BENNETT,

*Special Assistant to the U. S. Attorney.*

*Attorneys for the Defendant.*

Thereupon, and on June 20, 1936, the Court made and entered its order, consolidating said causes for the purpose of appeal and ordered that one bill of exceptions shall be sufficient for both cases and that only one record shall be required on appeal, which order is in words and figures as follows:

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ORDER.

(Captions Nos. 6980 and 6979 Law)

In accordance with the foregoing stipulation it is ordered that the above-entitled actions be consolidated for the purpose of appeal, that one bill of exceptions shall be sufficient for both cases, and that the records on appeal be consolidated, printed and filed as one record.

(Signed) R. M. GIBSON,

*D. J.*

Dated June 20, 1936.

*Bill of Exceptions—Stipulation.*

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By virtue of an order of the presiding judge made in accordance with stipulation between the parties hereto, Plaintiffs' Exhibit 5 and Defendant's Exhibits "A", "B", "X", "~~X~~", "DD", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP" and "QQ", and Defendant's Exhibit "LLL", parts of which are omitted from this bill of exceptions, are being transmitted by the Clerk of the District Court in compliance with said order direct to the Circuit Court of Appeals, said stipulation and order reading respectively as follows:

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STIPULATION.

(Captions Nos. 6980 and 6979 Law)

It is hereby stipulated and agreed by and between the parties hereto, acting by and through their respective counsel of record herein, that plaintiffs' original exhibit 5 and defendant's original exhibits "A", "B", "X", "Y", "DD", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP" and "QQ", and defendant's exhibit "LLL" may be submitted to the United States Circuit Court of Appeals for the Third Circuit, and if a review of these causes is had by the Supreme Court of the United States, then also to that Court in order that said Court or Courts may, if deemed necessary or desirable, have an opportunity of examining the whole of said exhibits in their original photostatic form.



*Bill of Exceptions—Order.*

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It is further stipulated and agreed that an order may be made approving this stipulation.

Dated this 30th day of June, 1936.

(Signed) REED, SMITH, SHAW & McCLAY,

(Signed) WILLIAM WALLACE BOOTH,

*Attorneys for the Plaintiffs.*

(Signed) CHARLES F. UHL,

*United States Attorney for the  
Western District of Pennsylvania.*

(Signed) ORRIS BENNETT,

*Special Assistant to the U. S. Attorney.*

(Signed) GEO. H. ZEUTZIUS,

*Special Assistant to the Attorney General.  
Attorneys for the Defendant.*

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ORDER.

Upon reading and filing the foregoing stipulation and sufficient cause appearing therefor, it is ORDERED, and this does order that the same be and hereby is approved.

Done at Pittsburgh this 30 day of June, 1936.

(Signed) R. M. GIBSON,

*District Judge.*

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Now therefore, in furtherance of justice and that right may be done, and forasmuch as said exceptions of the defendant do not otherwise appear of record, said defendant tenders and presents this, his bill of

*Bill of Exceptions—Certificate and Order Approving  
and Settling the Bill of Exceptions.*

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exceptions, in the above consolidated causes to the action of the Court in the various particulars herein specifically set out; and prays that all of said evidence contained in the foregoing bill of exceptions, together with the several exhibits, stipulations, motions, rulings, orders, and other papers copied and inserted therein be allowed in such form as being necessary to a proper understanding of the questions presented by said bill of exceptions, and that said bill of exceptions may be approved, settled, allowed and signed and sealed by the Court and made a part of the record.

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CERTIFICATE AND ORDER APPROVING  
AND SETTLING THE BILL OF  
EXCEPTIONS.

(Captions Nos. 6980 and 6979 Law.)

I, the undersigned, the United States District Judge who presided at the trial of the above entitled causes, do hereby certify that the foregoing bill of exceptions duly and timely proposed and agreed upon by counsel for the respective parties, contains all the testimony, exhibits, stipulations, motions, rulings, orders, and other papers and proceedings and other evidence introduced and had upon the said trial of said causes, and that all of said evidence which is set out in said bill of exceptions by question and answer is in the opinion of said District Judge necessary and proper for

*Bill of Exceptions—Certificate and Order Approving  
and Settling the Bill of Exceptions.*

---

the presentation of the questions raised and for a proper understanding of the questions presented by said bill of exceptions, and further that it is necessary to a proper understanding of said questions to incorporate herein the documentary evidence at length, including all the evidence, stipulations of facts read into the record and agreed to by counsel for the respective parties, motions, rulings, orders, and other papers to the extent that the same has been done herein; and I hereby settle and allow said foregoing bill of exceptions as a full, true and correct bill of exceptions in these causes and order the same filed as part of the record herein...

That each and every of the exceptions taken by counsel for defendant on the questions of evidence propounded during the course of the trial as shown by the foregoing transcript of the evidence and proceedings were timely taken and then and there duly allowed, and defendant's counsel requested that the seal of the Court should be put thereto, which was done according to the form of the statute in such cases made and provided.

I further certify that the foregoing bill of exceptions conforms to all local rules relating to the presenting, settling, and filing of a bill of exceptions, and that the foregoing bill of exceptions is presented, settled, allowed, sealed and ordered filed within the term of this Court in which the

*Stipulation as to Printing Record.*

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decisions and judgments in said causes were rendered as timely extended.

Dated and sealed this 30th day of June, 1936.

ROBERT M. GIBSON (SEAL)

ROBERT M. GIBSON,  
*District Judge.*

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The foregoing bill of exceptions has been examined, approved and agreed upon this 30th day of June, 1936.

REED, SMITH, SHAW & McCLAY,

by WILLIAM WALLACE BOOTH,

*Attorneys for Plaintiffs.*

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**Stipulation as to Printing Record.**

(Filed July 3, 1936.)

And now, to wit, June 30, 1936, it is hereby stipulated by and between the respective counsel in the above-entitled cases, which have been consolidated by agreement of counsel and order of court, that the following be printed as and constitute, (together with Plaintiffs' Exhibit "5" and Defendant's Exhibits "A", "B", "X", "Y", "DD", "HH", "II", "JJ", "KK", "LL", "MM", "NN", "OO", "PP", "QQ", and "LLL", which are to be separately certified to the Circuit Court of Appeals and transmitted with the transcript of record) the consolidated record on ap-



*Stipulation as to Printing Record.*

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peal in said cases before the United States Circuit Court of Appeals for the Third Circuit.

1. Docket entries, in each case.
2. Statement of claim, with annexed exhibits "A", "B", "C", "D" and "E", in each case.
3. Suggestion of death and motion for substitution of executors and order; also accompanying certificate of Register for the probate of wills, in Law No. 6979.
4. Amended affidavit of defense with annexed notice, application and order, in each case.
5. Reply to affidavit of defense, in each case.
6. Stipulation waiving jury trial, in each case.
7. Opinion of the Court (which includes Court's findings of fact, conclusions of law and discussion) together with attached order for judgment in each case.
8. Motion and order of court extending to July 1, 1936, the term of court and the time for signing, allowance and filing of bill of exceptions, in each case.
9. Stipulation and order of court extending the time for appellant to file transcript of record on appeal to July 10, 1936, in each case.
10. Stipulation and order of court extending the time and term of court for the signing allow-

*Stipulation as to Printing Record.*

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- ance and filing of bill of exceptions to August 1, 1936, and for filing transcript of record to August 10, 1936, in each case.
11. Stipulation and order of court consolidating cases for purposes of appeal.
  12. Petition for appeal and order allowing same, in each case.
  13. Assignment of errors, in each case.
  14. Bill of exceptions with certificate.
  15. This stipulation.
  16. Certificate of Clerk.

REED, SMITH, SHAW & McCLAY,  
WILLIAM WALLACE BOOTH,  
*Attorneys for the Plaintiffs.*

CHARLES F. UHL,  
*United States Attorney for the  
Western District of Pennsylvania.*

ORRIS BENNETT,  
*Special Assistant to U. S. Attorney.  
Attorneys for the Defendant.*

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*Certificate of Clerk.*

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**Certificate of Clerk.**

*Western District of Pennsylvania, ss.:*

I, G. H. BERGER, Clerk of the District Court of the United States, for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record on appeal in the above entitled case, so full and entire, as the same remains on record and file in my office in the City of Pittsburgh, in said district, in accordance with the notice filed by counsel.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of said Court, at Pittsburgh, this .... day of ....., A. D. 19.....

G. H. BERGER,  
*Clerk.*

(SEAL)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT

No. 6151. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE, APPELLANT

*vs.*

JENNIE KING MELLON ET AL., EXRS. OF THE EST. OF R. B. MELLON,  
DECEASED, APPELLEES

No. 6152. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE, APPELLANT

*vs.*

A. W. MELLON, APPELLEE

And afterwards, to wit, the 13th day of November 1936, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable J. Warren Davis, and Honorable J. Whitaker Thompson, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 15th day of March 1937, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

United States Circuit Court of Appeals, for the Third Circuit

No. 6151. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE FOR THE TWENTY-THIRD DISTRICT OF PENNSYLVANIA,  
APPELLANT

*v.*

JENNIE KING MELLON, RICHARD KING MELLON, SARAH MELLON SCAIFE  
AND THE UNION TRUST COMPANY OF PITTSBURGH, EXECUTORS OF THE  
ESTATE OF R. B. MELLON, DECEASED, APPELLEES



No. 6152. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE FOR THE TWENTY-THIRD DISTRICT OF PENNSYLVANIA,  
APPELLANT

v.

A. W. MELLON, APPELLEE

Upon Appeal from Judgments of the District Court for the Western  
District of Pennsylvania

*Opinion*

Filed March 15, 1937

Before BUFFINGTON, DAVIS, and THOMPSON, Circuit Judges

THOMPSON, J.: These are appeals from judgments of the District Court for the Western District of Pennsylvania. The cases were tried by stipulation without a jury. The facts are as follows:

In 1918 R. B. Mellon, A. W. Mellon, and H. C. Frick entered into partnership agreements to do business under the names of A. Overholt & Company and West Overton Distilling Company for the purpose of liquidating two whiskey distilling corporations of the same names. No new stock was to be manufactured or purchased, the sole purpose of the partnership being to liquidate the assets of the former concerns. In 1919 Frick died. No new partnership agreements were entered into by the two surviving partners, R. B. Mellon and A. W. Mellon. In 1921 the surviving partners appointed the Union Trust Company of Pittsburgh trustee and liquidating agent. The two partnerships were finally liquidated and distribution made to the surviving partners and to the estate of the deceased partner in 1925. In 1921 separate income tax returns were filed in the names of the partnerships on official partnership forms. R. B. Mellon signed the returns "Richard B. Mellon—Member of Partnership" setting forth as the other members of the partnership, A. W. Mellon and the estate of H. C. Frick. The Commissioner increased the net income of each of the partnerships so as to include profits realized from sales of whiskey in 1920. The distributive shares of R. B. Mellon and A. W. Mellon, as members of this partnership, were similarly increased. Deficiencies in the individual income tax returns of R. B. Mellon and A. W. Mellon were assessed and collected by the Commissioner in 1927. Claims for refund were filed with the Commissioner in 1929 and were rejected by him in 1934. R. B. Mellon and A. W. Mellon thereupon brought actions at law for the recovery of the income taxes alleged to have been erroneously collected by the Commissioner.

The District Court found that the partnerships were dissolved by the death of Frick in 1919 and that the assets of the partnerships thereupon changed character from stock in trade to capital assets. It concluded that the surviving partners did not realize any taxable income from the sale of the whiskey until the amount actually received from the partnerships equalled and exceeded the cost value

and interests of the surviving partners in the partnerships as of the date of the death of the deceased partner. It held that R. B. Mellon and A. W. Mellon were therefore entitled to the claimed refunds.

The question is whether the profits derived from the sale of whiskey in 1920 were taxable in that year. Article 1570 of Regulations 45 promulgated under the Revenue Act of 1918 reads:

"When a partner retires from a partnership, or it is dissolved, he realizes a gain or loss measured by the difference between the price received for his interest and the cost to him or (if acquired prior thereto) the fair market value as of March 1, 1913, of his interest in the partnership, including in such cost or value the amount of his share in any undistributed partnership net income earned since February 28, 1913, on which the income tax has been paid. \* \* \*

In Pennsylvania the death of one of the partners dissolves the partnership. *Froess, Admx., v. Froess*, 284 Pa. 369. Uniform Partnership Act of March 26, 1915, P. L. 18 sec. 31 (d) (4). The above quoted Regulation therefore became pertinent after the death of Frick in 1919. When Frick died and the partnerships were thereby dissolved, no gain was realized until such time as each surviving partner and the representative of the estate of the deceased partner, respectively, received an amount in excess of the cost to him of his partnership interests and of the undistributed net income on which the income tax had been paid. There were no means of determining whether profit or loss resulted from the sale of the assets of the dissolved partnerships until the proceeds should exceed the base, calculated in accordance with the Treasury Regulations above quoted. That had not occurred in 1920, for, whereas the Commissioner found that R. B. Mellon and A. W. Mellon received \$233,429.21 each from the sale of A. Overholt & Company whiskey and \$46,853.73 each from the sale of West Overton Distilling Company whiskey, it is conceded that the base for computation of the tax liability arising by reason of their respective interests in A. Overholt & Company was \$990,755.53 and \$60,505.66 in West Overton Distilling Company. Our conclusion is that the Commissioner erred in assessing the deficiencies for 1920.

We find no grounds for applying the doctrine of either legal or equitable estoppel. There was no misrepresentation, no concealment and no reliance, all essential to an estoppel. At most there was a mutual mistake of law. The Commissioner had all the relevant facts before him. He was informed that Frick was a partner, that Frick died in 1919 and that the partnerships thereafter were in process of liquidation. The surviving partners, under a mistake of law, filed returns as a partnership rather than as liquidating trustees. The Commissioner, under a mistake of law, continued to treat the partnerships as though they had been unaffected by the death of one of the partners. The mistake of law was mutual.

It is argued that if the appellees are not liable as partners they are liable as transferees of the assets of the two companies. Inas-

much as we have concluded that there was no tax due for 1920 it seems to follow that no tax is collectible from the appellees as transferees.

We find no errors in the rulings of the District Court upon admission of evidence, nor in its findings of fact and conclusions of law. The judgments of the District Court are affirmed.

A true Copy:

Teste:

*Clerk of the United States Circuit Court  
of Appeals for the Third Circuit.*

United States Circuit Court of Appeals for the Third Circuit

No. 6151. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE, APPELLANT

*vs.*

JENNIE KING MELLON ET AL., EXECUTORS OF THE ESTATE OF R. B.  
MELLON, DECEASED, APPELLEES

On appeal from the District Court of the United States for the  
Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 15, 1937.

J. W. THOMPSON, *Circuit Judge.*

[Endorsements:] Order Affirming Judgment. Received & Filed  
Mar. 15, 1937. Wm. P. Rowland, Clerk.

United States Circuit Court of Appeals for the Third Circuit

No. 6152. October Term, 1936

D. B. HEINER, INDIVIDUALLY AND AS FORMER COLLECTOR OF INTERNAL  
REVENUE, APPELLANT

*vs.*

A. W. MELLON, APPELLEE

On appeal from the District Court of the United States for the  
Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Philadelphia, March 15, 1937.

J. W. THOMPSON, *Circuit Judge.*

[Endorsements]: Order Affirming Judgment. Received & Filed Mar. 15, 1937. Wm. P. Rowland, Clerk.

UNITED STATES OF AMERICA,

*Eastern District of Pennsylvania, Third Judicial Circuit, set:*

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record, Vol. IV, and proceedings in this Court in the cases of D. B. Heiner, ind., and as former Collector vs. Jennie King Mellon et al., Exrs. Est. R. B. Mellon, Deceased, No. 6151; D. B. Heiner, ind., and as Former Collector, vs. A. W. Mellon, No. 6152, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 3d day of June, in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States the one hundred and sixty-first.

[SEAL]

WM. P. ROWLAND,  
*Clerk of the U. S. Circuit Court  
of Appeals, Third Circuit.*



714 Supreme Court of the United States

No. 144 — October Term, 1937

*Order allowing certiorari*

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice and Mr. Justice Stone took no part in the consideration and decision of this application.

Mr. Justice Black took no part in the consideration and decision of this application.

715 Supreme Court of the United States

No. 145—October Term, 1937

*Order allowing certiorari*

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice and Mr. Justice Stone took no part in the consideration and decision of this application.

Mr. Justice Black took no part in the consideration and decision of this application.